Supreme Court, U.S.
FILED
SEP 3 1997
CLERK

(3)

No. 97-42

In the Supreme Court of the United States

OCTOBER TERM, 1997

EASTERN ENTERPRISES,
Petitioner,
v.
JOHN J. CALLAHAN,
ACTING COMM'R OF SOCIAL SECURITY, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

---

BRIEF FOR RESPONDENTS THE UMWA COMBINED BENEFIT FUND AND ITS TRUSTEES IN OPPOSITION

JOHN R. MOONEY
MOONEY, GREEN, BAKER GIBSON & SAINDON, P.C.
The Colorado Building
1341 G Street, N.W.
Washington, D.C. 20005
(202) 783-0010

DAVID W. ALLEN
Office of the General Counsel
UMWA Health and Retirement Funds
4455 Connecticut Ave., N.W.
Washington, D.C. 20008
(202) 895-3737

PETER BUSCEMI
Counsel of Record
DAVID LUBITZ
MORGAN, LEWIS & BOCKIUS LLP
1800 M Street, N.W.
Washington, D.C. 20036-5869
(202) 467-7190

Counsel for Respondents The UMWA Combined Benefit Fund and Its Trustees

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

77 pp

QUESTION PRESENTED

In the Coal Industry Retiree Health Benefit Act of 1992 (the "Coal Act"), 26 U.S.C. §§ 9701 *et seq.*, Congress determined that each employer that voluntarily participated in the collective bargained multiemployer health care system for active and retired miners in the coal industry and whose former employees were still receiving benefits from that system should, beginning on February 1, 1993, pay the future health care costs of the retired employees and dependents assigned to that employer by the Commissioner of Social Security under the criteria set forth in the statute.

The question presented is whether the Coal Act, as applied to petitioner, violates the Due Process and Takings Clauses of the Fifth Amendment.

LIST OF PARTIES

In addition to the parties named in the caption, the other parties in the court of appeals were the UMWA Combined Benefit Fund and its trustees, Marty D. Hudson, Thomas O.S. Rand, Elliot A. Segal, Carlton R. Sickles, Gail R. Wilensky, Michael H. Holland, and William P. Hobgood, and Peabody Holding Company, Eastern Associated Coal Corp., and Coal Properties Corp. All of these parties are respondents in this Court.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
LIST OF PARTIES	ii
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
STATUTE INVOLVED	1
STATEMENT OF THE CASE	2
A. The UMWA Multiemployer Health And Medical Funds	4
1. Establishment of the UMWA Multiemployer Health Care System	4
2. The Establishment of the UMWA 1950 and 1974 Benefit Trusts	6
B. The Crisis That Threatened The UMWA Trusts Beneficiaries And The Efforts To Resolve It	7
C. Congressional Solution To The Health Care Crisis In The Coal Industry—The Coal Act	11
D. Petitioner's Participation In The UMWA Trusts And Its Role In The Financial Crisis That Led To The Passage Of The Coal Act	14
E. Proceedings In The Courts Below	16
ARGUMENT	18
I. THE COURT OF APPEALS CORRECTLY RULED THAT PETITIONER'S LIABILITY UNDER THE COAL ACT IS NEITHER ARBITRARY NOR IRRATIONAL AND DOES NOT VIOLATE PETITIONER'S DUE PROCESS RIGHTS	20

TABLE OF CONTENTS—Continued

	Page
II. THE COURT OF APPEALS CORRECTLY CONCLUDED THAT THE COAL ACT DOES NOT EFFECT AN UNCONSTITUTIONAL TAKING OF PETITIONER'S PROPERTY	25
CONCLUSION	29

TABLE OF AUTHORITIES

CASES

	Page
Associated Electric Cooperative, Inc. v. Hudson, C.A. No. 93-944 (D.D.C. April 21, 1997)	18
Association of Bituminous Contractors v. Shalala, C.A. No. 93-2304 (D.D.C. April 21, 1997), *appeal pending*, No. 97-5132 (D.C. Cir. docketed May 27, 1997)	18
Barnes & Tucker Co. v. Hudson, C.A. No. 93-264J (W.D. Pa. March 18, 1997), *appeal pending*, No. 97-3236 (3d Cir. docketed April 30, 1997)	19
Barrick Gold Exploration, Inc. v. Hudson, 47 F.3d 832 (6th Cir.), *cert. denied*, 116 S. Ct. 64 (1995)	18
Bellaire Corp. v. Chater, C.A. No. 93-183 (D.D.C. April 21, 1997)	18
Blue Diamond Coal Co. v. Secretary of HHS, 79 F.3d 516 (6th Cir.), *cert. denied*, 117 S. Ct. 682 (1997)	17, 18, 22, 27
Carbon Fuel Co. v. USX Corp., 100 F.3d 1124 (4th Cir. 1996)	17, 18
Concrete Pipe & Products of Cal. v. Construction Laborers Pension Trust, 508 U.S. 602 (1993)	23, 24, 25, 26, 28
Connolly v. Pension Benefit Guaranty Corp., 475 U.S. 211 (1986)	23, 24, 26, 27-28
Davon, Inc. v. Shalala, 75 F.3d 1114 (7th Cir.), *cert. denied*, 117 S. Ct. 50 (1996)	17, 18, 22, 27, 28
District 29, UMWA v. UMWA 1974 Benefit Plan and Trust, 826 F.2d 280 (4th Cir. 1987), *cert. denied*, 485 U.S. 935 (1988)	22
General Motors Corp. v. Romein, 503 U.S. 181 (1992)	21
Holland v. High-Tech Collieries, Inc., 911 F. Supp. 1021 (N.D. W. Va. 1996)	18
Holland v. Imperial Colliery Co., C.A. No. 1:94-0793 (S.D. W. Va. Dec. 7, 1995)	18
Holland v. Keenan Trucking Co., 102 F.3d 736 (4th Cir. 1996)	17, 18, 22
In re Chateaugay, 945 F.2d 1205 (2d Cir.), *cert. denied*, 502 U.S. 1093 (1993)	22

TABLE OF AUTHORITIES—Continued

Page

Landgraf v. USI Film Prods., 511 U.S. 244 (1994) 20-21
Lindsey Coal Mining Co. Liquidating Trust v. Chater, 90 F.3d 688 (3d Cir. 1996) 17, 18, 22
Lone Star Steel Company v. Chater, C.A. No. 3:94-CV-652-R (N.D. Tex. Aug. 30, 1996) 18
LTV Steel Company, Inc. v. Shalala, 53 F.3d 478 (2d Cir.), *cert. denied*, 116 S. Ct. 298 (1995) 17, 18, 24, 27, 28
Mary Helen Coal Corp. v. Hudson, C.A. No. 3:97CV71 (E.D. Va. Aug. 28, 1997) 18
Penn Central Transportation Co. v. New York City, 438 U.S. 104 (1978) 26, 28
Pension Benefit Guaranty Corp. v. R.A. Gray & Co., 467 U.S. 717 (1984) 21, 24
Railroad Retirement Board v. Alton, 295 U.S. 330 (1935) 24
UMWA v. Nobel, 720 F. Supp. 1169 (W.D. Pa. 1989), *aff'd without opinion*, 902 F.2d 1558 (3d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991) 22
United States v. Northeastern Pharmaceutical & Chemical Co., Inc., 810 F.2d 726 (8th Cir. 1986), *cert. denied*, 484 U.S. 848 (1987) 21, 28
Unity Real Estate Co. v. Hudson, 889 F. Supp. 818 (W.D. Pa. 1995) 19
Unity Real Estate Co. v. Hudson, C.A. No. 93-1802 (W.D. Pa. March 18, 1997), *appeal pending*, No. 97-3234 (3d Cir. docketed April 30, 1997) 19
Usery v. Turner Elkhorn Mining Co., 428 U.S. 1 (1976) 21, 22-23, 24, 28

STATUTES AND CONSTITUTIONAL PROVISIONS

U.S. Const. 5th Amendment ..... *passim*
Coal Industry Retiree Health Benefit Act of 1992 ("the Coal Act"), 26 U.S.C. §§ 9701 *et seq.* ..... *passim*
26 U.S.C. § 9702 ..... 11, 15
26 U.S.C. § 9703 12
26 U.S.C. § 9704 ..... 2, 12, 13, 15, 19
26 U.S.C. § 9705 ..... 2, 13, 22

TABLE OF AUTHORITIES—Continued

Page

26 U.S.C. § 9706 ..... 2, 12, 13, 15, 16, 19, 22
26 U.S.C. § 9708 14
26 U.S.C. § 9712 11
30 U.S.C. § 1232(h) 2, 13
Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001 *et seq.* 6
Social Security Independence and Program Improvements Act of 1994, Pub. L. No. 103-296, §§ 105(a)(2)(A), 108(h)(9), 108 Stat. 1472, 1487-88 (1994) 2
26 U.S.C. § 277 7
26 U.S.C. § 404(c) 5, 7

MISCELLANEOUS

11 Fed. Reg. 5593 (1946) 4
136 Cong. Rec. S12312 8
Coal Commission Report: A Report to the Secretary of Labor and the American People (November 1990) 8-11
H.R. Rep. No. 2543, 83d Cong., 2d Sess. 43 (1954), *reprinted in* 1954 U.S.C.C.A.N. 5280, 5303 6
S. Rep. No. 1622, 83d Cong., 2d Sess. 56 (1954), *reprinted in* 1954 U.S.C.C.A.N. 4623, 4687 5-6

In the Supreme Court of the United States

OCTOBER TERM, 1997

No. 97-42

EASTERN ENTERPRISES,
Petitioner,

v.

JOHN J. CALLAHAN,
ACTING COMM'R OF SOCIAL SECURITY, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

---

BRIEF FOR RESPONDENTS THE UMWA COMBINED BENEFIT FUND AND ITS TRUSTEES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A-1 to A-23) is reported at 100 F.3d 150. The district court's judgment and order (Pet. App. A-24 to A-27) are not reported. An earlier opinion by the district court (Pet. App. A-28 to A-38) is reported at 942 F. Supp. 684.

STATUTE INVOLVED

This case concerns the constitutionality of the Coal Industry Retiree Health Benefit Act of 1992 (the "Coal Act"), which was enacted as part of the Energy Policy Act of 1992, Pub. L. No. 102-456, 106 Stat. 2776, 3036-3056. The Coal Act added a new Subtitle J, "Coal Industry Health Benefits," to the Internal Revenue Code. Subtitle J is codified at 26 U.S.C. §§ 9701-9722. (For convenience, we refer to these new Internal Revenue Code provisions simply as sections of the Coal Act.) The statute also amended the Surface Mining Control and

Reclamation Act of 1977 (the "Surface Mining Act"). The Surface Mining Act amendments, 106 Stat. 3056, are codified in principal part at 30 U.S.C. § 1232(h).

The petition does not reproduce the statute in full. It omits all but one of the prefatory provisions of the Coal Act, which set forth Congress's findings and declarations of policy. It also omits 26 U.S.C. § 9705, which provides hundreds of millions of dollars for retiree health care from sources other than retirees' former employers, thus reducing the financial burden on companies like petitioner. Finally, the petition omits all sections of the Coal Act after 26 U.S.C. § 9706. Accordingly, the entire statute, as it appears in the Statutes at Large, is reproduced in the appendix to this brief.[1]

STATEMENT OF THE CASE

The petition presents an incomplete and misleading account of the origins of the Coal Act, the problem that Congress sought to address, the nature of the legislative solution, and the rationale for the congressional action. It also attempts to minimize petitioner's own involvement with the collectively bargained multiemployer health care system that provided benefits to coal miners and their families for more than 40 years prior to the enactment of the Coal Act.

In particular, petitioner Eastern Enterprises ("Eastern") seeks to minimize the facts that as a signatory to several collective bargaining agreements and amendments, it participated in its own name in the UMWA Health and Retirement Funds for nearly 20 years, and thereafter participated in those Funds for more than another 20 years, as

[1] Effective March 31, 1995, Congress transferred the Secretary's duties under the Coal Act to the Commissioner of Social Security ("Commissioner"). *See* 26 U.S.C. §§ 9704, 9706 (historical notes); Social Security Independence and Program Improvements Act of 1994, Pub. L. No. 103-296, §§ 105(a)(2)(A), 108(h)(9), 108 Stat. 1472, 1487-88 (1994). Accordingly, the Commissioner has been substituted for the Secretary in this case.

the parent and direct financial beneficiary of its wholly-owned subsidiary, Eastern Associated Coal Corp. ("Eastern Associated"). Operating as Eastern's wholly-owned subsidiary, Eastern Associated signed several multiemployer collective bargaining agreements (including the 1974, 1978, 1981, and 1984 contracts), participated in the UMWA Health and Retirement Funds, and systematically forwarded to its parent Eastern, in the form of dividends or other transfers, tens of millions of dollars of earnings from Eastern Associated's coal operations. Nevertheless, under the assignment criteria established by Congress in Section 9706 of the Coal Act, 26 U.S.C. § 9706, petitioner has been assigned financial responsibility for the health care of certain former employees and their dependents *only if* the retirees in question *never worked* for Eastern Associated or any other employer that signed a coal wage agreement in 1978 or thereafter. That is, Eastern is obliged to pay for the health care of certain of *its own* former employees, but not for any persons who ever worked for Eastern Associated or any other post-1978 signatory employer. All of this is ignored in the petition. Similarly, the petition distorts the reasoning of the courts below, which (like all of the other federal courts that have rendered judgment on the Coal Act) rejected petitioner's arguments and sustained the statute in its entirety.

To put the Coal Act and the present dispute in its proper context, we first review the nearly 50-year history of the UMWA Health & Retirement Funds, petitioner's substantial participation in those Funds, and the financial crisis that afflicted the Funds. We then turn to the Coal Act itself and its legislative history, explaining the provisions of the statute, the reasons for the congressional intervention, and the basis for Congress's conclusion that the problem could not be solved through private collective bargaining. Finally, we summarize the decisions below and the grounds on which petitioner's constitutional challenges were rejected.

A. The UMWA Multiemployer Health And Medical Funds

For more than 40 years, the United Mine Workers of America ("UMWA") and the Bituminous Coal Operators' Association, Inc. ("BCOA"), a multiemployer bargaining association representing various companies in the coal industry, have entered into a series of collective bargaining agreements known as National Bituminous Coal Wage Agreements ("NBCWAs"). Each NBCWA required signatory coal operators to pay contributions to finance health benefits for active and retired miners and their dependents through multiemployer benefit plans. The origin of these plans was an historic agreement between the federal government and the UMWA in 1946.

1. *Establishment of the UMWA Multiemployer Health Care System*

The first coal industry multiemployer benefit plan was created by agreement between the UMWA and the United States, in settlement of a national strike during which the federal government had seized virtually all of the nation's coal mines. The dispute began when, during collective bargaining negotiations between the UMWA and the bituminous coal operators, the UMWA proposed that the parties create a health and welfare fund for its members. The employers rejected the proposal, and a strike ensued. In an effort to end the strike and avoid further disruption in the coal industry and elsewhere in the economy, President Truman issued Executive Order No. 9728 on May 21, 1946, directing Secretary of the Interior Julius Krug to seize the mines. 11 Fed. Reg. 5593 (1946). The order also authorized Secretary Krug to negotiate with the UMWA for changes in the miners' terms and conditions of employment. *Id.*

Those negotiations culminated in what is known as the Krug-Lewis Agreement. The Krug-Lewis Agreement created a multiemployer benefit plan called the United Mine Workers of America Welfare and Retirement Fund (the "1946 W&R Fund"). The 1946 W&R Fund was intended to provide various health and retirement benefits

to UMWA miners and their dependents and survivors. In addition, under the Krug-Lewis Agreement, the federal government committed to conduct a comprehensive study of medical facilities and medical care in the nation's coal mining areas. At the request of Secretary Krug, that survey was conducted, and a report prepared, by Rear Admiral Joel T. Boone of the United States Navy Medical Corps.

In 1947, following the return of the mines to private operation, the UMWA and the coal operators created a new multiemployer benefit plan known as the 1947 UMWA Welfare and Retirement Fund (the "1947 W&R Fund"), which succeeded to the assets and liabilities of the 1946 W&R Fund. Like its predecessor, the 1947 W&R Fund was designed to make payments to UMWA miners and their dependents for a broad range of health and retirement benefits. By the end of December 1948, the 1947 W&R Fund had provided medical benefits and pensions to more than 250,000 coal miners and their families in 26 states.

In 1950, the UMWA and the coal operators created a new multiemployer fund called the UMWA Welfare and Retirement Fund of 1950 (the "1950 W&R Fund"). The 1950 W&R Fund succeeded to the assets and liabilities of the 1947 W&R Fund. Like the 1946 W&R Fund and the 1947 W&R Fund, the 1950 W&R Fund was intended to provide pension and health benefits to UMWA miners and their dependents.[2]

---

[2] Employer contributions to the 1950 W&R Fund were not tax deductible until 1954, when Congress amended the Internal Revenue Code. Congress wrote the amendment in such a way that it effectively applied only to the 1950 W&R Fund. *See* 26 U.S.C. § 404(c) (1954). In recommending the amendment, the Senate Finance Committee emphasized that the fund was "established during a period of Government operation" and was "the result of an agreement between employee representatives and the United States Government during a period of Government seizure and operation of most of the facilities of the industry." S. Rep. No. 1622, 83d Cong.,

In July 1950, building upon the 1947 W&R Fund's medical program, the 1950 W&R Fund introduced a comprehensive hospital and medical care program. The program included the payment of unlimited hospitalization and in-hospital medical care for the following classes of beneficiaries: working and unemployed miners; working and unemployed miners' wives and dependent children under age 18; retired miners and their wives; widows of deceased miners; and relatives of deceased miners who cared for the miners' orphaned children. The program's hospital and medical care coverage for miners' widows terminated only upon their remarriage.

During the 28 years of their existence, from 1946 to 1974, the 1950 W&R Fund and its predecessors provided comprehensive health care coverage to UMWA active and retired miners and their families. As such, the Funds had a significant impact on the economies of the bituminous coal producing states and the UMWA mining families that lived in those states. During this period, the 1950 W&R Fund and its predecessors collected approximately $3.9 billion in contributions from signatory coal operators, and paid approximately $1.5 billion in hospital and medical care benefits, $283 million in survivors and other related benefits, and approximately $2 billion in pension benefits.

2. *The Establishment of the UMWA 1950 and 1974 Benefit Trusts*

The 1950 W&R Fund continued to provide health benefits through the term of the 1971 NBCWA, which ended in 1974. Under the 1974 NBCWA, however, partly in response to the newly enacted Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 *et seq.* ("ERISA"), BCOA and the UMWA agreed to divide the 1950 W&R Fund into four separate multiemployer plans.[8]

2d Sess. 56 (1954), *reprinted in* 1954 U.S.C.C.A.N. 4623, 4687. *See also* H.R. Rep. No. 2543, 83d Cong., 2d Sess. 43 (1954), *reprinted in* 1954 U.S.C.C.A.N. 5280, 5303.

[8] In 1974, Congress again enacted special provisions in the Internal Revenue Code to alleviate potential tax burdens to employers that otherwise would have accompanied the restructuring of the 1950 W&R Fund. The rationale supporting these special provisions was the same as the one that supported the original enactment of Section 404(c) of the Internal Revenue Code twenty years earlier. *See* 26 U.S.C. §§ 277, 404(c).

Two of the four new plans provided pension benefits to retired miners. The other two plans provided health benefits to retired miners. One of the health benefit plans, known as the UMWA 1950 Benefit Plan and Trust (the "1950 Benefit Trust"), provided health benefits to eligible UMWA miners who left covered service in the coal industry before 1976. The second plan, known as the UMWA 1974 Benefit Plan and Trust (the "1974 Benefit Trust"), provided health benefits for eligible miners who left covered service in 1976 or thereafter, as well as for the active work force.

In 1978, the UMWA and BCOA restructured the industry's contractual health care system to address employer concerns that the multiemployer approach was unraveling as fewer companies elected to participate in the multiemployer plans and an increasing burden was placed on a shrinking base of signatory operators. The 1978 NBCWA continued the multiemployer approach for providing health benefits to eligible persons who left covered service before January 1, 1976, but it provided that persons who completed their covered service on or after that date would receive their health benefits from single-employer plans maintained by the retirees' "last NBCWA signatory employer." The 1974 Benefit Trust was retained to provide health benefits on a multiemployer basis to eligible persons who left covered service on or after January 1, 1976 and whose last signatory employers were no longer in business.

B. The Crisis That Threatened The UMWA Trusts' Beneficiaries And The Efforts To Resolve It

During the past decade, the problems that led to the 1978 restructuring of the collectively bargained multiemployer health care system became more acute and

threatened the 1950 and 1974 Benefit Trusts' ability to continue providing health benefits to their beneficiaries. The uncertainty of continued health benefits for active and retired UMWA miners led to substantial labor strife in the nation's bituminous coal mining regions and threatened the economies of several coal-producing states.[4]

One of the most serious labor disputes was a ten-month strike by the UMWA against the Pittston Coal Company and its related entities. When collective bargaining failed to resolve the dispute, Secretary of Labor Elizabeth Dole intervened and appointed former Secretary of Labor William J. Usery as mediator. As part of the eventual settlement of the dispute, Secretary Dole established a special advisory commission called the Secretary of Labor's Advisory Commission on United Mine Workers of America Retiree Health Benefits (the "Coal Commission"). The Secretary authorized the Coal Commission to analyze the retiree health care crisis and recommend a solution. Former Secretary Usery was appointed Chair of the Coal Commission.

The Coal Commision submitted its findings and recommendations to Secretary Dole in November 1990 in a report entitled "Coal Commission Report: A Report to the Secretary of Labor and the American People."[5] In analyzing the health care crisis in the coal industry, the Coal Commission stated that ensuring the continued provision of health benefits to UMWA retirees and their de-

---

[4] *See, e.g.*, 136 Cong. Rec. S12312 (statement of Senator Rockefeller) (daily ed. Oct. 2, 1989) ("the [UMWA health] funds contribute many millions of dollars to the West Virginia economy and sustain the efforts of many health care practitioners and organizations. If allowed to continue unchecked, the financial difficulties in the UMWA health funds could cripple health care delivery in West Virginia and in coal counties of states like Alabama, Arkansas, Colorado, Illinois, Indiana, Kentucky, Ohio, Pennsylvania, and Virginia").

[5] A copy of the Coal Commission Report, as it appeared at pages 1320-1426 of the joint appendix in the court of appeals, has been lodged with the Clerk of this Court.

pendents should be the primary objective of any proposed solution:

> Retired coal miners have legitimate expectations of health care benefits for life; that was the promise they received during their working lives and that is how they planned their retirement years. That commitment should be honored. But today those expectations and commitments are in jeopardy.

Coal Commission Report at 1. Recognizing the historical origins of the UMWA Trusts, the Coal Commission observed:

> The medical care delivery system that has evolved is as much a creature of government as it is of the collective bargaining process. There is a line running from the original Boone Report to the present system. In a way, the original Krug-Lewis agreement predisposed if not predetermined the system that evolved.

Id. at 29. The Coal Commission identified three developments, the combination of which "has left the Funds, which were created to provide retired coal miners and their families with one of the finest health care programs in the nation, in a financial crisis." *Id.* at 2.

First, the Coal Commission found that "the number of coal companies making contributions to the Funds has declined significantly." Coal Commission Report at 2.[6] Second, it recognized the dramatic increase in the cost of health care between 1950 and 1990, stating that "[i]n the past 10 years alone, the total cost of [annual] health care benefits paid by the Funds has doubled from $117.4 million to $245.3 million." *Id.* Finally, the Coal Commission noted the "steady increase in the number of orphaned retirees whose employers have either gone out of business or no longer provide health care benefits." *Id.* In light of these facts, and its finding that the 1950 and 1974

---

[6] The Coal Commission found that, while companies contributing to the UMWA multiemployer health benefit system in 1950 represented 80 percent of the coal produced in the nation, "by 1990, companies making contributions to the [UMWA Benefit Trusts] account[ed] for only 30 percent of national coal production."

Benefit Trusts' funding bases were declining faster than their beneficiary populations, the Coal Commission predicted that the Benefit Trusts would have a combined estimated deficit of $300 million by 1993. *Id.* at 3.

The Coal Commission recognized that the collective bargaining process was inadequate to provide a long-term solution to the health care crisis. By its very nature, collective bargaining could address only those employers that were still mining coal and were still doing so with employees represented by the UMWA. Such bargaining thus could not hope to deal with the ever-growing number of orphan retirees. Accordingly, the Commission recommended two alternative statutory approaches.

The Coal Commission's first approach called for the creation of two new funds: (1) a quasi-governmental corporation financed by an industry-wide tax on all coal operators to finance the health care of UMWA orphan retirees; and (2) a private multiemployer fund financed by signatories to the 1978 and later NBCWAs to provide health care to UMWA retirees whose last employer remained in business. Coal Commission Report at 61-64. The second approach called for the creation of a single, private multiemployer plan, financed by present and former NBCWA signatories, to provide health benefits to UMWA retirees in the 1950 and 1974 Benefit Trusts, including the orphan retirees. *Id.* at 65-69. Whereas the first approach would have generated revenues through an industry-wide tax, the second approach imposed liability only upon employers (and their related business entities) that were signatory to one or more NBCWAs:

> Instead of imposing a new tax on all coal operators and establishing an agency of the federal government, *this plan seeks additional revenues from a broadened base of current and past signatories to the contracts*, establishing and providing revenues for the Benefit Funds. Past obligations would be defined as those arising from firms once signatory who may be identified through a chain of succession to a current operator.

Id. at 65 (emphasis added).[7]

C. Congressional Solution To The Health Care Crisis In The Coal Industry—The Coal Act

Following the Coal Commission's Report, Congress undertook its own intensive examination of the subject. The Coal Act was the final product of those deliberations. In enacting the Coal Act, Congress found that

> it is necessary to modify the private health care benefit plan structure for retirees in the coal industry to identify persons most responsible for plan liabilities in order to stabilize plan funding and allow for the provision of health care benefits to such retirees.

App. 1a. Congress further stated that the policy of the Coal Act is

> to remedy problems with the provision and funding of health care benefits with respect to the beneficiaries of multiemployer benefit plans that provide health care benefits to retirees in the coal industry . . . [and] to provide for the continuation of a privately financed self-sufficient program for the delivery of health care benefits to the beneficiaries of such plans.

Id.

In the Coal Act, Congress created two new trust funds for the provision of health care benefits to retired miners and their dependents. One of those funds, the Combined Fund, is at issue in the present case.[8] As the statute required, the 1950 and 1974 UMWA Benefit Trusts were merged into the Combined Fund as of February 1, 1993. *See* 26 U.S.C. § 9702(a)(2). The Combined Fund now provides health and death benefits to coal industry retirees who, as of July 20, 1992, were eligible to receive, and

---

[7] Eastern erroneously asserts (Pet. 8) that the Coal Commission's second approach was limited to 1978 or later NBCWA signatories. That is not accurate.

[8] The Coal Act also created the 1992 United Mine Workers of America Benefit Plan ("1992 Plan"), an entirely new entity designed to provide benefits to eligible retirees who are not beneficiaries of the Combined Fund and who are not receiving health care coverage directly from their former employers. *See* 26 U.S.C. § 9712.

were receiving, benefits from the 1950 Benefit Trust or the 1974 Benefit Trust. 26 U.S.C. § 9703(a), (b)(1), (e), (f).

In the Coal Act, Congress adopted a financing arrangement for the Combined Fund similar to the second approach recommended by the Coal Commission, under which only employers that were signatory to one or more NBCWAs are required to share the burden of financing health benefits for the affected retirees and their dependents. The Coal Act reflects Congress's determination that those companies that participated in the contractual multiemployer health care system in the coal industry and that actually employed the retirees still receiving benefits from that system should bear the financial responsibility for providing health care benefits to such retirees and their dependents.

Congress implemented this "pay for your own" policy by creating a statutory system under which the Secretary (now, the Commissioner) would assign to signatory operators certain of their former employees among the Combined Fund's beneficiaries. *See* 26 U.S.C. §§ 9704, 9706. Each employer's annual liability is based on the number of beneficiaries that have been assigned to it by the Secretary in accordance with a specific list of priorities set forth in the statute. *See* 26 U.S.C. § 9706. Under the detailed statutory criteria, the Secretary was required to place a higher assignment priority on post-1978 NBCWA signatories than on pre-1978 NBCWA signatories.[9]

[9] Specifically, the Secretary was first required to assign each retiree to the employer that was signatory to the 1978 NBCWA or any subsequent NBCWA and that most recently employed the retiree for at least two years. 26 U.S.C. § 9706(a)(1). If the Secretary could not assign a retiree to a coal operator pursuant to this first method, she was next required to assign the retiree to the coal operator that was signatory to the 1978 NBCWA or any subsequent NBCWA and that employed the retiree most recently in the coal industry, without regard to the number of years of employment. 26 U.S.C. § 9706(a)(2). Third, if she could not assign a retiree to a coal operator pursuant to the first two methods, the Secretary was required to assign the retiree to the pre-1978 signatory operator that employed the retiree for the longest period of time. 26 U.S.C. § 9706(a)(3). If the Secretary could not identify any NBCWA signatory operator that remains in business (or that has a "related person" remaining in business) and that formerly employed a particular retiree, the retiree was designated an "unassigned beneficiary". 26 U.S.C. §§ 9704(d), 9705.

Under the Coal Act, the cost of financing health care coverage for orphan retirees and their dependents (*i.e.*, beneficiaries who could not be assigned to any former employer) is to be shared by the employers that voluntarily participated in the UMWA multiemployer health benefits system and that have been assigned Combined Fund beneficiaries under the criteria set forth in Section 9706. The statute provides for an "unassigned beneficiaries premium," to be allotted among signatory operators on the basis of their pro rata share of the beneficiaries that have been assigned. 26 U.S.C. § 9704(d). Congress determined that all of the employers that voluntarily participated in the collective decision to provide health care through pooled multiemployer plans and that still had beneficiaries in those plans contributed to the origins of the health care crisis in the coal industry and should be part of the solution.

To help alleviate the financial burden of health care for unassigned beneficiaries, Congress authorized three transfers of $70 million each to the Combined Fund from the UMWA 1950 Pension Plan and Trust ("1950 Pension Trust"). These transfers were made on the first day of each of the Combined Fund's first three fiscal years. 26 U.S.C. § 9705. Thereafter, Congress authorized additional annual transfers, to be made from the Abandoned Mine Reclamation Fund established under the Surface Mining Control and Reclamation Act of 1977. *See* 26 U.S.C. §§ 9704(d), 9705, 30 U.S.C. § 1232(h) (1994). These transfers, the first two of which have amounted to nearly $80 million, may be used only to defray the expense of providing health benefits to unassigned beneficiaries. To date, these transfers have completely offset these orphan beneficiary health care costs, and no assigned

operator has had to pay an unassigned beneficiaries premium.

Congress made no attempt to rewrite the collective bargaining agreements or to readjust the contractual rights and liabilities of the parties to the NBCWAs. Instead, Congress simply used the termination date of the 1988 NBCWA, February 1, 1993, as the date on which the old collectively bargained system would be replaced by the new statutory trusts. The Coal Act explicitly provides that all pre-February 1, 1993 contractual obligations to the 1950 and 1974 Benefit Trusts are to be governed exclusively by the applicable collective bargaining agreements. 26 U.S.C. § 9708.

D. Petitioner's Participation In The UMWA Trusts And Its Role In The Financial Crisis That Led To The Passage Of The Coal Act

Eastern Gas & Fuel Associates, later known as Eastern Enterprises, was organized in Massachusetts as a business trust in 1929 and, through its Coal Division, conducted extensive coal operations, employing UMWA miners, until 1966. Eastern participated in, and contributed to, the UMWA Trusts from the inception of the 1946 W&R Fund. Eastern signed the NBCWAs of 1947 and 1950, and the 1951, 1952, 1955, 1956, 1958, and 1964 amendments to the 1950 NBCWA. As a signatory to these agreements, Eastern participated in, and contributed to, the 1947 and 1950 W&R Funds. During the period from August 1946 through December 1965, Eastern contributed more than $60 million to the 1950 W&R Fund and its predecessors. UMWA miners employed by Eastern earned service credits that contributed to their eventual eligibility for retiree health care from the UMWA Trusts.

In 1963 Eastern created Eastern Associated as a wholly-owned subsidiary of Eastern. By January 1, 1966, Eastern transferred its Coal Division assets to Eastern Associated. Thereafter, for more than 20 years, Eastern Associated conducted coal mining operations, employing UMWA miners, for the ultimate benefit of Eastern and its

shareholders. Eastern Associated participated in, and contributed to, the 1950 W&R Fund and the 1950 and 1974 Benefit Trusts. Between January 1966 and December 1987, Eastern Associated contributed more than $233 million to the 1950 W&R Fund and its successors.

Eastern continued to derive substantial monetary benefit from its wholly-owned subsidiary, Eastern Associated. In 1966 Eastern received a $500,000 dividend from Eastern Associated, and in 1970 Eastern Associated transferred stock as a dividend to Eastern at a cost to Eastern Associated of $1,475,000. Eastern then sold the stock for a gain of $9,433,000 after paying taxes of $4,042,000. Eastern received numerous additional dividends from Eastern Associated, including at minimum $16,000,000 in 1971, $20,000,000 in 1972, $7,000,000 in 1976, $1,500,000 in 1977, and $24,162,854 in 1986.

In 1987, Eastern sold Eastern Associated to respondent Peabody Holding Company ("Peabody"). Eastern continues to be registered as a business in Massachusetts. It currently owns three subsidiaries. Boston Gas, Midland Enterprises, Inc., and WaterPro Supplies Corporation.

Eastern initially was assessed premiums for 1494 beneficiaries in the Combined Fund's first fiscal year and 1430 beneficiaries in the Combined Fund's second fiscal year. No beneficiary assigned to Eastern worked for Eastern Associated or any other employer that signed a 1978 or later NBCWA, and, in accordance with Section 9706 (a)(3) of the Coal Act, all of the retirees assigned to Eastern worked for Eastern for a longer period of time than they worked for any other still-existing signatory operator in the coal industry. Following the initial assignment of beneficiaries by the Secretary, the Trustees of the Combined Fund sent to Eastern and the other assigned operators assessments for the annual health care premiums required by the Coal Act.[10] *See* 26 U.S.C. §§ 9702(c), 9704(g)(1), 9704(i)(2).

---

[10] For the Combined Fund's first five fiscal years, which include the eight-month period from February 1, 1993 through September

E. Proceedings In The Courts Below

Petitioner filed this case in November 1993. Claiming that the Coal Act violates the Due Process and Takings Clauses of the Fifth Amendment, Eastern sought declaratory and injunctive relief against enforcement of its obligations to pay annual health care premiums under the statute. Under Section 9706(f) of the Coal Act, Eastern also submitted to the Commissioner of Social Security requests for administrative review of the beneficiary assignments made to Eastern. Thereafter, Eastern amended its complaint to include a claim that all of the assignments to Eastern were erroneous and that the beneficiaries in question should have been assigned to Eastern Associated. The Trustees of the Combined Fund answered and counterclaimed for a declaratory judgment that the Coal Act is valid economic regulatory legislation. Eastern then filed a third-party complaint against Peabody, Eastern Associated, and another Peabody subsidiary, claiming that if Eastern is lawfully obligated to pay annual health care premiums under the Coal Act, then Peabody must indemnify Eastern for that obligation, as a result of Peabody's acquisition in 1987 of the stock of Eastern Associated.

The district court decided to address first Eastern's statutory challenge to the assignment of beneficiaries, and the court therefore awaited the Commissioner's ruling on Eastern's contention that all of the beneficiaries should have been assigned to Eastern Associated. The Commissioner, acting in the context of Eastern's challenge to the assignment of miner Samuel East and his widow, sustained the assignment, observing that Mr. East had worked for Eastern for many years and had never worked for Eastern Associated. Since there is no question that Eastern remains in business, the Commissioner ruled that the assignment was appropriate under 26 U.S.C. § 9706(a)(3). Treating the Commissioner's determination with respect to Mr. and Mrs. East as a test case, the district court held

---

30, 1993, and the four years thereafter through September 30, 1997, Eastern has been assessed a total of $16,836,791.

that the assignment was clearly proper under the Coal Act. The court thus rejected Eastern's statutory claim that all of the beneficiaries assigned to Eastern should have been assigned instead to Eastern Associated. Pet. App. A-25 to A-35.

After receiving additional summary judgment submissions from the parties, the district court turned to Eastern's constitutional claims. Relying heavily on three previous court of appeals decisions in three different circuits sustaining the validity of the Coal Act, the district court granted summary judgment for the government and the Combined Fund. Pet. App. A-25 to A-27, *citing Blue Diamond Coal Co. v. Secretary of HHS*, 79 F.3d 516 (6th Cir., *cert. denied*, 117 S. Ct. 682 (1997); *Davon, Inc. v. Shalala*, 75 F.3d 1114 (7th Cir.), *cert. denied*, 117 S. Ct. 50 (1996); *LTV Steel Company, Inc. v. Shalala*, 53 F.3d 478 (2d Cir.), *cert. denied*, 116 S. Ct. 298 (1995). The court entered final judgment under Fed. R. Civ. P. 54(b) with respect to Eastern's statutory and constitutional claims. In accordance with an agreement of the parties, the court stayed Eastern's third-party claims against Peabody pending completion of appellate review of the judgment entered under Rule 54(b).

The court of appeals affirmed. Pet. App. A-1 to A-23. By the time of the First Circuit's decision, two other courts of appeals had joined the Second, Sixth, and Seventh Circuits in upholding the constitutionality of the Coal Act. *See Holland v. Keenan Trucking Co.*, 102 F.3d 736, 741-42 (4th Cir. 1996); *Carbon Fuel Co. v. USX Corp.*, 100 F.3d 1124, 1138-39 (4th Cir. 1996); *Lindsey Coal Mining Co. Liquidating Trust v. Chater*, 90 F.3d 688 (3d Cir. 1996). As the court of appeals correctly observed in this case, Eastern's "constitutional arguments are retreads which have taken their lumps from courts of appeals in five other circuits." Pet. App. A-2. The court rejected Eastern's "substantive due process" argument, holding that "[r]ationality review yields a positive result in this case." Pet. App. A-12; *see also id.* at A-9 to A-18. Similarly, the court dismissed Eastern's Takings Clause

argument, ruling that "there is no basis whatever for the appellant's claim that the statute transgresses the Takings Clause." Pet. App. A-23.

ARGUMENT

The decision of the court of appeals is correct, and review by this Court is unwarranted. Eight panels of six courts of appeals (including the decision below) have unqualifiedly upheld the constitutionality of the Coal Act in the face of challenges like petitioner's. *See LTV Steel Company, Inc., v. Shalala*, 53 F.3d 478 (2d Cir.), *cert. denied*, 116 S. Ct. 298 (1995); *Lindsey Coal Mining Co. Liquidating Trust v. Shalala*, 90 F.3d 688 (3d Cir. 1996); *Holland v. Keenan Trucking Co.*, 102 F.3d 736 (4th Cir. 1996); *Carbon Fuel Co. v. USX Corp.*, 100 F.3d 1124 (4th Cir. 1996); *Blue Diamond Coal Co. v. Secretary of HHS*, 79 F.3d 516 (6th Cir.), *cert. denied*, 117 S. Ct. 682 (1997); *Barrick Gold Exploration, Inc. v. Hudson*, 47 F.3d 832 (6th Cir.), *cert. denied*, 116 S. Ct. 64 (1995); *Davon, Inc. v. Shalala*, 75 F.3d 1114 (7th Cir.), *cert. denied*, 117 S. Ct. 50 (1996).

In addition, a number of district courts have sustained the Coal Act against constitutional attacks. *Lone Star Steel Company v. Chater*, C.A. No. 3:94-CV-652-R (N.D. Tex. Aug. 30, 1996) (Coal Act does not violate Due Process or Takings Clauses); *Holland v. High-Tech Collieries, Inc.*, 911 F. Supp. 1021 (N.D. W. Va. 1996) (same); *Holland v. Imperial Colliery Co.*, C.A. No. 1:94-0793 (S.D. W. Va. Dec. 7, 1995) (Coal Act, on its face, does not violate Appointments Clause, and does not violate Due Process or Takings Clauses, or Separation of Powers or Vested Rights doctrines, as applied to Imperial); *Mary Helen Coal Corp. v. Hudson*, C.A. No. 3:97CV71 (E.D. Va. Aug. 28, 1997); *Bellaire Corp. v. Chater*, C.A. No. 93-183 (D.D.C. April 21, 1997); *Associated Electric Cooperative, Inc. v. Hudson*, C.A. No. 93-944 (D.D.C. April 21, 1997); *Association of Bituminous Contractors v. Shalala*, C.A. No. 93-2304 (D.D.C. April 21, 1997), *appeal pending*, No. 97-5132 (D.C. Cir. docketed May 27, 1997); *Unity Real Estate Co. v. Hudson*, C.A. No. 93-1802 (W.D. Pa. March 18, 1997), *appeal pending*, No. 97-3234 (3d Cir. docketed April 30, 1997); *Barnes & Tucker Co. v. Hudson*, C.A. No. 93-264J (W.D. Pa. March 18, 1997), *appeal pending*, No. 97-3236 (3d Cir. docketed April 30, 1997).[11]

There is no suggestion by petitioner that a conflict among the courts of appeals exists, or is even likely to occur in the future. As petitioner acknowledges, the courts of appeals have uniformly sustained the constitutionality of the Coal Act. Here, as in the earlier Coal Act cases in which this Court has denied review, the agreement among the courts of appeals and district courts, and the consistency of the many rulings upholding the Coal Act with the precedents of this Court, militate strongly against further examination of the same legal arguments that have been rejected repeatedly without dissent in jurisdiction after jurisdiction.

Nor is there any unresolved or controversial question of federal constitutional law presented here. Like many other companies that have challenged the Coal Act, petitioner attempts to show that its situation is unique. The attempt fails, however. Many other companies subject to liability under the Coal Act continued making contributions to the UMWA Trusts through February 1, 1993 and thus did not "dump" beneficiaries into the UMWA Trusts as some employers did. But this fact did not absolve these contributing employers of Coal Act liability. *See* 26 U.S.C. §§ 9704, 9706 (imposing liability on NBCWA signatory employers having beneficiaries in the Combined

[11] Eastern cites *Unity Real Estate Co. v. Hudson*, 889 F. Supp. 818 (W.D. Pa. 1995), in which the district court preliminarily enjoined enforcement of the Coal Act as applied to a particular company. As the unpublished final decision cited in the text shows, however, the district court later vacated that preliminary ruling and granted summary judgment for the Trustees and the Commissioner, holding that there was no Takings Clause violation. Thus, no district or appellate court anywhere has ruled that the Coal Act violates the Constitution.

Fund, including signatories that made collectively bargained contributions throughout the period from 1946 to 1993 and that plainly did not "dump" beneficiaries into the multiemployer trusts). Eastern therefore has no basis to contend that Eastern Associated's ongoing contributions to the UMWA Trusts somehow impose a constitutional obstacle to any statutory liability on the part of Eastern. Congress decided that Eastern should pay for the health care of those retirees that Eastern employed and Eastern Associated did not. Neither the Due Process Clause nor the Takings Clause forecloses this legislative choice.

I. THE COURT OF APPEALS CORRECTLY RULED THAT PETITIONER'S LIABILITY UNDER THE COAL ACT IS NEITHER ARBITRARY NOR IRRATIONAL AND DOES NOT VIOLATE PETITIONER'S DUE PROCESS RIGHTS

Petitioner's main complaint is that, in reviewing Congress's determination that companies should be held responsible for their former employees' health benefits, the court of appeals should have accorded more weight to the fact that Eastern was "replaced" in the coal industry by Eastern's wholly-owned subsidiary, Eastern Associated, and that therefore Eastern did not "dump" former employees into the Combined Fund's orphan beneficiary pool by leaving the coal industry or by switching to non-UMWA miners. Eastern erroneously jumps from this factual premise to the conclusion that Eastern in no way contributed to the conditions that led to the Coal Act and that therefore application of the statute to Eastern is impermissible. As the court of appeals correctly ruled, however, Eastern takes "much too crabbed a view of the historical record." Pet. App. A-14. Eastern's argument also relies on an improperly restricted conception of what Congress and the courts may consider in assessing the rationality of economic legislation.[12]

[12] Although the court of appeals, citing *Landgraf v. USI Film Prods.*, 511 U.S. 244, 270 (1994), viewed the Coal Act as retroactive legislation and sustained the statute notwithstanding that

The court of appeals acknowledged Eastern's argument but found it insufficient:

> Congress and the Coal Commission both reviewed the historical record and concluded that pre-1974 signatories had made an implicit commitment to furnish [retiree health] benefits. Since Eastern, as a signatory of the earlier NBCWAs, contributed directly to mine workers' legitimate expectations of lifetime health benefits, requiring it to pay for the realization of those benefits is hardly irrational.

Pet. App. A-13 (citations omitted). Eastern (Pet. 17 n.6) rejects this reading of the pre-1974 NBCWAs and asserts that "no reasonable person reading them would think that they made any such promise." However, a great

label, *Landgraf* also said that "[a] statute does not operate 'retrospectively' merely because it is applied in a case arising from conduct antedating the statute's enactment . . . or upsets expectations based in prior law." *Id.* at 269. *See also United States v. Northeastern Pharmaceutical & Chemical Co., Inc.*, 810 F.2d 726, 741 (8th Cir. 1986), *cert. denied*, 484 U.S. 848 (1987) (a statute that "imposes liability for the *present and future* conditions resulting from past acts" is not retroactive) (emphasis in original). By contrast to the Black Lung Benefits Act and the Multiemployer Pension Plan Amendments Act, the Coal Act does not require any payments for periods before the statute's enactment. The Coal Act focuses entirely on future health care coverage for eligible beneficiaries. It does not upset, or alter in any way, prior contractual obligations concerning the provision of health care benefits during the period before the Combined Fund began providing benefits on February 1, 1993. Indeed, the statute expressly provides that it shall have no effect on pre-February 1, 1993 contractual obligations to provide retiree health benefits. 26 U.S.C. § 9708. The Coal Act thus left prior collective bargaining agreements unchanged and fully effective, recognized that future collective bargaining with an ever-decreasing number of employers could not solve the problems of the UMWA Trusts, and prospectively substituted a new remedial statutory system for the preexisting contractual regime. As the court of appeals correctly ruled, however, even if the Coal Act is considered to be retroactive in some sense, the rational basis standard is still the test for evaluating the legislation. *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 17 (1976); *Pension Benefit Guaranty Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 730 (1984); *General Motors Corp. v. Romein*, 503 U.S. 181, 191 (1992).

many courts have agreed with the First Circuit that all NBCWA signatories played some role in creating a legitimate expectation of lifetime benefits, and no court has agreed with petitioner. *See, e.g., UMWA v. Nobel,* 720 F. Supp. 1169, 1173, 1178 (W.D. Pa. 1989), *aff'd without opinion,* 902 F.2d 1158 (3d Cir. 1990), *cert. denied,* 499 U.S. 904 (1991); *District 29, UMWA v. UMWA 1974 Benefit Plan and Trust,* 826 F.2d 280, 282 (4th Cir. 1987), *cert. denied,* 485 U.S. 935 (1988); *In re Chateaugay,* 945 F.2d 1205, 1210 (2d Cir.), *cert. denied,* 502 U.S. 1093 (1993); *Keenan Trucking,* 102 F.3d at 736; *Lindsey,* 90 F.3d at 694; *Blue Diamond,* 79 F.3d at 522; *Davon,* 75 F.3d at 1124.

The court of appeals made several other points in support of its conclusion that Congress acted rationally in holding petitioner liable under the Coal Act. First, it noted that the Coal Act "takes some pains to shield companies like Eastern from disproportionate liability." Pet. App. A-15; *see* 26 U.S.C. §§ 9705, 9706(a). As the court explained,

> Eastern and companies like it are third in the hierarchical order of assignment; they will never feel the statutory sting if a 1978 (or more recent) NBCWA signatory which employed a particular miner still exists, or if any other non-defunct company employed the miner for a longer period of time than they did.

Moreover, the court observed, Eastern's right to "seek recompense from companies like [Eastern Associated] is statutorily preserved." *Id.; see* 26 U.S.C. § 9706(f)(6). Finally, the court reminded Eastern that its former subsidiary Eastern Associated had "returned tens of millions of dollars in dividends to Eastern during the post-1966 period." *Id.*

This Court's substantive due process decisions sustaining economic regulatory legislation firmly support the court of appeals (and all of the other courts that have agreed with it). Indeed, the primary case on which petitioner relies, *Usery v. Turner Elkhorn Mining Co.,* 428 U.S. 1 (1976), supports the decision to deny Eastern relief. In

Turner Elkhorn, this Court upheld the Black Lung Benefits Act and rejected the coal operators' argument that the statute violated their due process rights by requiring them to compensate former employees who completed their work in the industry before the statute was passed. In doing so, this Court explicitly rejected a theory of blameworthiness as a prerequisite for liability, and it specifically held that Congress did not act arbitrarily or irrationally when it decided to impose financial liability on companies based on past employment relationships. This Court said:

> [I]t is for Congress to choose between imposing the burden of inactive miners' disabilities on all operators, including new entrants and farsighted early operators who might have taken steps to minimize black lung dangers, or to impose that liability solely on those early operators whose profits may have been increased at the expense of their employees' health.

428 U.S. at 18. The Court went on to declare that "[w]e are unwilling to assess the wisdom of Congress' chosen scheme. . . . It is enough to say that the Act approaches the problem of cost spreading rationally." *Id.* at 19. The same reasoning defeats petitioner's position here.

There is also nothing in this Court's decisions in *Connolly v. Pension Benefit Guaranty Corp.,* 475 U.S. 211 (1986), or *Concrete Pipe & Products of Cal. v. Construction Laborers Pension Trust,* 508 U.S. 602 (1993), or Justice O'Connor's concurring opinions in those cases, that suggests that the decision below is incorrect. To the contrary, in *Concrete Pipe,* this Court upheld, against an as-applied substantive due process attack, the pension plan withdrawal liability imposed by the Multiemployer Pension Plan Amendments Act of 1980 ("MPPAA"). The Court explained that "[w]hen the withdrawing employer's liability to the plan is based on the proportion of the plan's contributions (and coincident service credits) provided by the employer during the employer's participation in the plan, the imposition of withdrawal liability is clearly rational." 508 U.S. at 638. Justice O'Connor's concurrences in *Concrete Pipe* and *Connolly* merely observed that the absence

of *any* connection between an employer's conduct and its liability to an employee benefit fund might raise constitutional concerns. 475 U.S. at 211. Here, however, Eastern's undisputed employment relationship with Combined Fund beneficiaries and its direct participation in all of the pre-1966 NBCWAs provide ample connection between Eastern's conduct and the imposed liability. Petitioner's attempts to rely on *Turner Elkhorn* and Justice O'Connor's concurrences in *Connolly* and *Concrete Pipe* are similar to the appellant's argument in *LTV*, 53 F.3d at 490, that this Court's decisions in those cases "represent a closed set of permissible justifications." The Second Circuit correctly rejected that argument, holding that, "on the contrary, these cases all reiterate the principle that retrospective cost-spreading statutes must be upheld if there exists a rational connection between a legitimate legislative purpose and the chosen statutory base." *Id.*[13]

Eastern's effort to slough off all financial responsibility for its retirees' health care and to shift that responsibility to its former subsidiary Eastern Associated overlooks two critical points. First, as emphasized above, none of the beneficiaries that were assigned to Eastern ever worked for Eastern Associated. Second, every NBCWA—not only the NBCWAs and numerous amendments that Eastern signed but the several later NBCWAs, including the NBCWAs of 1974, 1978, 1981, 1984, and 1988—was effective only for a term of years. This was just as true of the NBCWAs that referred to a "Health Services card until death" as it was of the earlier agreements. After each contract terminated, the continued provision of health care depended on the negotiation and signing of a new national collective bargaining agreement that contained such benefits. In the absence of a legislative solution, the signatories of the 1988

[13] Petitioner asks this Court to "resuscitate" *Railroad Retirement Board v. Alton*, 295 U.S. 330 (1935). *See Gray*, 467 U.S. at 733. However, as the court of appeals pointed out, this Court's "comments have made clear that [*Alton*] should be regarded as a dead letter." Pet. App. A-18 n.7. Moreover, even if *Alton* were still good law, its facts are readily distinguishable from those here. Pet. App. A-16 n.6. *See also LTV*, 53 F.3d at 488-89.

NBCWA could have refused to sign a new collective bargaining agreement in 1993 or thereafter and then claimed that they had no further obligation to fund health care for their own former employees or anyone else's. It was precisely this situation that Congress sought to address in the Coal Act.

In short, petitioner has offered nothing new that in any way would call into question the conclusion correctly reached by both courts below and every other court that has considered the matter—Congress acted rationally in including Eastern and other former NBCWA signatories among those that are required to finance the benefits provided by the Combined Fund. Eastern's entire argument ignores the central question that confronted Congress during its deliberations on the Coal Act: who would pay for retiree health care in the coal industry after termination of the 1988 NBCWA. To answer this question Congress chose to assess Coal Act liability based on a finding of "responsibility" derived from past employment relationships rather than contractual promises. There was, and is, nothing irrational about that approach.[14]

II. THE COURT OF APPEALS CORRECTLY CONCLUDED THAT THE COAL ACT DOES NOT EFFECT AN UNCONSTITUTIONAL TAKING OF PETITIONER'S PROPERTY

In addressing Eastern's Takings Clause challenge, the court of appeals stated: "The Supreme Court has warned that when a due process argument has proven unavailing, 'it would be surprising indeed to discover the challenged statute nonetheless violating the Takings Clause.'" Pet. App. A-19 (quoting *Concrete Pipe*, 508 U.S. at 614). Pointing to this statement, Eastern accuses the court below of conducting a less-than-thorough review of Eastern's Tak-

[14] Indeed, as the court of appeals observed, "[i]n many respects, the system currently in place is more rational than the alternative that Eastern proposes. . . . [T]he Coal Act bases liability on actions throughout the time frame when miners' expectations were formed." Pet. App. A-15 n.5.

ings Clause arguments. The court of appeals' opinion, however, belies this contention. *See generally* Pet. App. A-19 to A-23.

As even petitioner grudgingly concedes, the court of appeals addressed the very three factors that this Court identified in *Connolly* and in *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978), as relevant to the Takings Clause inquiry—the economic impact of the regulation, the extent to which the regulation has interfered with distinct and reasonable investment-backed expectations, and the character of the government action. The court correctly concluded that "the statutory scheme, as applied, does not impermissibly confiscate Eastern's property." Pet. App. A-23.

With respect to the economic impact of the Coal Act, the court of appeals followed this Court's approach in *Connolly* and *Concrete Pipe* and considered whether "Eastern's liability is reasonably related to its experience with the benefit plans that eventually blended into the Combined Fund." Pet. App. A-20. In this regard, the court observed that "it is highly significant that the extent of Eastern's statutory liability depends on its links to the provision of health benefits for particular miners." *Id.* at A-20 to A-21. Given the beneficiary assignment criteria set forth in Section 9706 of the statute, the court ruled, "Eastern's liability will be roughly proportionate to the expectation of health benefits that it created and which have been satisfied by the industry since 1950 in a series of multiemployer plans." *Id.* at A-21. The court of appeals thus echoed all of the other federal courts that have considered Takings Clause challenges to the Coal Act.

As the court recognized, it does not matter, for purposes of the economic proportionality of Eastern's Coal Act liability, that Eastern Associated contributed to the UMWA multiemployer trusts in the years after Eastern transferred its coal operations to Eastern Associated. Eastern has been assigned Coal Act liability only for retirees who worked for Eastern and not for Eastern Associated

or any other post-1978 signatory employer. This fact, together with the Coal Act provisions that "moderate the statutory toll" by transferring substantial sums to the Combined Fund from non-employer sources, demonstrates that the Coal Act's economic impact is, in the court of appeals' phrase, "constitutionally tolerable." Pet. App. A-21.

Turning to the question whether the Coal Act improperly interfered with Eastern's distinct and reasonable investment-backed expectations, the court of appeals correctly held that, "[h]aving contributed to the expectation of lifetime benefits for miners, Eastern had every reason to anticipate that it might be called upon to bear some of the financial burden that this expectation engendered." Pet. App. A-22. This was especially so, in the court's view, because of the historical pattern of federal involvement with the coal industry and the UMWA multiemployer trusts. Against this background, the court said, "Eastern cannot reasonably . . . feign astonishment when a measure like the Coal Act is passed to forestall further labor unrest." *Id.* The court thus followed several other federal courts that have considered and rejected arguments similar to those that Eastern makes here. *See, e.g., Blue Diamond*, 79 F.3d at 525-26; *Davon*, 75 F.3d at 1128-29; *LTV*, 53 F.3d at 495-96.

Nor is Eastern helped by its related complaint that the contractual health care commitments in the NBCWAs were valid only during the life of the agreements. As this Court explained in *Connolly*:

> "Contracts, however, express, cannot fetter the constitutional authority of Congress. Contracts may create rights of property, but when contracts deal with a subject matter which lies within the control of Congress, they have a congenital infirmity. Parties cannot remove their transactions from the reach of dominant constitutional power by making contracts about them." *Norman v. Baltimore & Ohio R. Co.*, 294 U.S. 240, 307-08 (1935).

> If the regulatory statute is otherwise within the powers of Congress, therefore, its application may not be defeated by private contractual provisions.

475 U.S. at 223-24 (citation omitted). *See also Concrete Pipe*, 508 U.S. at 639-41; *Davon*, 75 F.3d at 1114; *LTV*, 53 F.3d at 495.

Finally, with respect to the third *Connolly-Penn Central* factor, the character of the governmental action, the court of appeals properly stressed that "[t]he Coal Act, like the MPPAA, is merely a public program that readjusts economic burdens . . . ." Pet. App. A-23. It involves no physical occupation, invasion, or appropriation of property. Coal Act premiums "are paid to a private benefit fund, not to a government entity." *Id.* They are intended not for the government's own use but to provide health care for thousands of UMWA retirees and their dependents. Far from being unique, therefore, the Coal Act has characteristics comparable to other economic legislation that has already passed constitutional scrutiny. *See, e.g., Turner Elkhorn*, 428 U.S. at 17-18; *Northeastern Pharmaceutical and Chemical Co.*, 810 F.2d at 734. The Coal Act "adjusts the benefits and burdens of economic life to promote the common good," and it is, consistent with this Court's prior decisions, constitutional legislation. Pet. App. A-22 (quoting *Connolly*, 475 U.S. at 225).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

JOHN R. MOONEY
MOONEY, GREEN, BAKER GIBSON & SAINDON, P.C.
The Colorado Building
1341 G Street, N.W.
Washington, D.C. 20005
(202) 783-0010

DAVID W. ALLEN
Office of the General Counsel
UMWA Health and Retirement Funds
4455 Connecticut Ave., N.W.
Washington, D.C. 20008
(202) 895-3737

PETER BUSCEMI
Counsel of Record
DAVID LUBITZ
MORGAN, LEWIS & BOCKIUS LLP
1800 M Street, N.W.
Washington, D.C. 20036-5869
(202) 467-7190

Counsel for Respondents The UMWA Combined Benefit Fund and Its Trustees

September 3, 1997

APPENDIX

APPENDIX

Subtitle C—Health Care of Coal Miners

Sec. 19141. Short Title.

This subtitle may be cited as the "Coal Industry Retiree Health Benefit Act of 1992".

Sec. 19142. Findings and Declaration of Policy.

(a) FINDINGS.—The Congress finds that—

(1) the production, transportation, and use of coal substantially affects interstate and foreign commerce and the national public interest; and

(2) in order to secure the stability of interstate commerce, it is necessary to modify the current private health care benefit plan structure for retirees in the coal industry to identify persons most responsible for plan liabilities in order to stabilize plan funding and allow for the provision of health care benefits to such retirees.

(b) STATEMENT OF POLICY.—It is the policy of this subtitle—

(1) to remedy problems with the provision and funding of health care benefits with respect to the beneficiaries of multiemployer benefit plans that provide health care benefits to retirees in the coal industry;

(2) to allow for sufficient operating assets for such plans; and

(3) to provide for the continuation of a privately financed self-sufficient program for the delivery of health care benefits to the beneficiaries of such plans.

Sec. 19143. Coal Industry Health Benefits Program.

(a) IN GENERAL.—The Internal Revenue Code of 1986 is amended by adding at the end the following new subtitle:

"Subtitle J—Coal Industry Health Benefits

"CHAPTER 99—COAL INDUSTRY HEALTH BENEFITS

"Subchapter A—Definitions of General Applicability

"Sec. 9701. Definitions of General Applicability.

"(a) PLANS AND FUNDS.—For purposes of this chapter—

"(1) UMWA BENEFIT PLAN.—

"(A) IN GENERAL.—The term 'UMWA Benefit Plan' means a plan—

"(i) which is described in section 404(c), or a continuation thereof; and

"(ii) which provides health benefits to retirees and beneficiaries of the industry which maintained the 1950 UMWA Pension Plan.

"(B) 1950 UMWA BENEFIT PLAN.—The term '1950 UMWA Benefit Plan' means a UMWA Benefit Plan, participation in which is substantially limited to individuals who retired before 1976.

"(C) 1974 UMWA BENEFIT PLAN.—The term '1974 UMWA Benefit Plan' means a UMWA Benefit Plan, participation in which is substantially limited to individuals who retired on or after January 1, 1976.

"(2) 1950 UMWA PENSION PLAN.—The term '1950 UMWA Pension Plan' means a pension plan

described in section 404(c) (or a contination thereof), participation in which is substantially limited to individuals who retired before 1976.

"(3) 1974 UMWA PENSION PLAN.—The term '1974 UMWA Pension Plan' means a pension plan described in section 404(c) (or a continuation thereof), participation in which is substantially limited to individuals who retired in 1976 and thereafter.

"(4) 1992 UMWA BENEFIT PLAN.—The term '1992 UMWA Benefit Plan' means the plan referred to in section 9713A.

"(5) COMBINED FUND.—The term 'Combined Fund' means the United Mine Workers of America Combined Benefit Fund established under section 9702.

"(b) AGREEMENTS.—For purposes of this section—

"(1) COAL WAGE AGREEMENT.—The term 'coal wage agreement' means—

"(A) the National Bituminous Coal Wage Agreement, or

"(B) any other agreement entered into between an employer in the coal industry and the United Mine Workers of America that required or requires one or both of the following:

"(i) the provision of health benefits to retirees of such employer, eligibility for which is based on years of service credited under a plan established by the settlors and described in section 404(c) or a continuation of such plan; or

"(ii) contributions to the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, or any predecessor thereof.

"(2) SETTLORS.—The term 'settlors' means the United Mine Workers of America and the Bituminous Coal Operators' Asociation, Inc. (referred to in this chapter as the 'BCOA').

"(3) NATIONAL BITUMINOUS COAL WAGE AGREEMENT.—The term 'National Bituminous Coal Wage Agreement' means a collective bargaining agreement negotiated by the BCOA and the United Mine Workers of America.

"(c) TERMS RELATING TO OPERATORS.—For purposes of this section—

"(1) SIGNATORY OPERATOR.—The term 'signatory operator' means a person which is or was a signatory to a coal wage agreement.

"(2) RELATED PERSONS.—

"(A) IN GENERAL.—A person shall be considered to be a related person to a signatory operator if that person is—

"(i) a member of the controlled group of corporations (within the meaning of section 52(a)) which includes such signatory operator;

"(ii) a trade or business which is under common control (as determined under section 52(b)) with such signatory operator; or

"(iii) any other person who is identified as having a partnership interest or joint venture with a signatory operator in a business within the coal industry, but only if such business employed eligible beneficiaries, except that this clause shall not apply to a person whose only interest is as a limited partner.

A related person shall also include a successor in interest of any person described in clause (i), (ii), or (iii).

"(B) TIME FOR DETERMINATION.—The relationships described in clauses (i), (ii), and (iii) of subparagraph (A) shall be determined as of July 20, 1992, except that if, on July 20, 1992, a signatory operator is no longer in business, the relationships shall be determined as of the time immediately before such operator ceased to be in business.

"(3) 1988 AGREEMENT OPERATOR.—The term '1988 agreement operator' means—

"(A) a signatory operator which was a signatory to the 1988 National Bituminous Coal Wage Agreement,

"(B) an employer in the coal industry which was a signatory to an agreement containing pension and health care contribution and benefit provisions which are the same as those contained in the 1988 National Bituminous Coal Wage Agreement, or

"(C) an employer from which contributions were actually received after 1987 and before July 20, 1992, by the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan in connection with employment in the coal industry during the period covered by the 1988 National Bituminous Coal Wage Agreement.

"(4) LAST SIGNATORY OPERATOR.—The term 'last signatory operator' means, with respect to a coal industry retiree, a signatory operator which was the most recent coal industry employer of such retiree.

"(5) ASSIGNED OPERATOR.—The term 'assigned operator' means, with respect to an eligible benefi-

ciary defined in section 9703(f), the signatory operator to which liability under subchapter B with respect to the beneficiary is assigned under section 9706.

"(6) OPERATORS OF DEPENDENT BENEFICIARIES.—For purposes of this chapter, the signatory operator, last signatory operator, or assigned operator of any eligible beneficiary under this chapter who is a coal industry retiree shall be considered to be the signatory operator, last signatory operator, or assigned operator with respect to any other individual who is an eligible beneficiary under this chapter by reason of a relationship to the retiree.

"(7) BUSINESS.—For purposes of this chapter, a person shall be considered to be in business if such person conducts or derives revenue from any business activity, whether or not in the coal industry.

"(d) ENACTMENT DATE.—For purposes of this chapter, the term enactment date' means the date of the enactment of this chapter.

"Subchapter B—Combined Benefit Fund

"PART I—ESTABLISHMENT AND BENEFITS

"Sec. 9702. Establishment of the United Mine Workers of America Combined Benefit Fund.

"(a) ESTABLISHMENT.—

"(1) IN GENERAL.—As soon as practicable (but not later than 60 days) after the enactment date, the persons described in subsection (b) shall designate the individuals to serve as trustees. Such trustees shall create a new private plan to be known as the United Mine Workers of America Combined Benefit Fund.

"(2) MERGER OF RETIREE BENEFIT PLANS.—As of February 1, 1993, the settlors of the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan shall cause such plans to be merged into the Combined Fund, and such merger shall not be treated as an employer withdrawal for purposes of any 1988 coal wage agreement.

"(3) TREATMENT OF PLAN.—The Combined Fund shall be—

"(A) a plan described in section 302(c)(5) of the Labor Management Relations Act, 1947 (29 U.S.C. 186(c)(5)),

"(B) an employee welfare benefit plan within the meaning of section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)), and

"(C) a multiemployer plan within the meaning of section 3(37) of such Act (29 U.S.C. 1002(37)).

"(4) TAX TREATMENT.—For purposes of this title, the Combined Fund and any related trust shall be treated as an organization exempt from tax under section 501(a).

"(b) BOARD OF TRUSTEES.—

"(1) IN GENERAL.—For purposes of subsection (a), the board of trustees for the Combined Fund shall be appointed as follows:

"(A) one individual who represents employers in the coal mining industry shall be designated by the BCOA;

"(B) one individual shall be designated by the three employers, other than 1988 agreement operators, who have been assigned the greatest

number of eligible beneficiaries under section 9706;

"(C) two individuals designated by the United Mine Workers of America; and

"(D) three persons selected by the persons appointed under subparagraphs (A), (B), and (C).

"(2) SUCCESSOR TRUSTEES.—Any successor trustee shall be appointed in the same manner as the trustee being succeeded. The plan establishing the Combined Fund shall provide for the removal of trustees.

"(3) SPECIAL RULES.—

"(A) BCOA.—If the BCOA ceases to exist, any trustee or successor under paragraph (1)(A) shall be designated by the 3 employers who were members of the BCOA on the enactment date and who have been assigned the greatest number of eligible beneficiaries under section 9706.

"(B) FORMER SIGNATORIES.—The initial trustee under paragraph (1)(B) shall be designated by the 3 employers, other than 1988 agreement operators, which the records of the 1950 UMWA Benefit Plan and 1974 UMWA Benefit Plan indicate have the greatest number of eligible beneficiaries as of the enactment date, and such trustee and any successor shall serve until November 1, 1993.

"(c) PLAN YEAR.—The first plan year of the Combined Fund shall begin February 1, 1993, and end September 30, 1993. Each succeeding plan year shall begin on October 1 of each calendar year.

"Sec. 9703. Plan Benefits.

"(a) IN GENERAL.—Each eligible beneficiary of the Combined Fund shall receive—

"(1) health benefits described in subsection (b), and

"(2) in the case of an eligible beneficiary described in subsection (f)(1), death benefits coverage described in subsection (c).

"(b) HEALTH BENEFITS.—

"(1) IN GENERAL.—The trustees of the Combined Fund shall provide health care benefits to each eligible beneficiary by enrolling the beneficiary in a health care services plan which undertakes to provide such benefits on a prepaid risk basis. The trustees shall utilize all available plan resources to ensure that, consistent with paragraph (2), the coverage under the managed care system shall to the maximum extent feasible be substantially the same as (and subject to the same limitations of) coverage provided under the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of January 1, 1992.

"(2) PLAN PAYMENT RATES.—

"(A) IN GENERAL.—The trustees of the Combined Fund shall negotiate payment rates with the health care services plans described in paragraph (1) for each plan year which are in amounts which—

"(i) vary as necessary to ensure that beneficiaries in different geographic areas have access to a uniform level of health benefits; and

"(ii) result in aggregate payments for such plan year from the Combined Fund

which do not exceed the total premium payments required to be paid to the Combined Fund under section 9704(a) for the plan year, adjusted as provided in subparagraphs (B) and (C).

"(B) REDUCTIONS.—The amount determined under subparagraph (A)(ii) for any plan year shall be reduced—

"(i) by the aggregate death benefit premiums determined under section 9704(c) for the plan year, and

"(ii) by the amount reserved for plan administration under subsection (d).

"(C) INCREASES.—The amount determined under subparagraph (A)(ii) shall be increased—

"(i) by any reduction in the total premium payments required to be paid under section 9704(a) by reason of transfers described in section 9705,

"(ii) by any carryover to the plan year from any preceding plan year which—

"(I) is derived from amounts described in section 9704(e)(3)(B)(i), and

"(II) the trustees elect to use to pay benefits for the current year, and

"(iii) any interest earned by the Combined Fund which the trustees elect to use to pay benefits for the current plan year.

"(3) QUALIFIED PROVIDERS.—The trustees of the Combined Fund shall not enter into an agreement under paragraph (1) with any provider of services

which is of a type which is required to be certified by the Secretary of Health and Human Services when providing services under title XVIII of the Social Security Act unless the provider is so certified.

"(4) EFFECTIVE DATE.—Benefits shall be provided under paragraph (1) on and after February 1, 1993.

"(c) DEATH BENEFITS COVERAGE.—

"(1) IN GENERAL.—The trustees of the Combined Fund shall provide death benefits coverage to each eligible beneficiary described in subsection (f)(1) which is identical to the benefits provided under the 1950 UMWA Pension Plan or 1974 UMWA Pension Plan, whichever is applicable, on July 20, 1992. Such coverage shall be provided on and after February 1, 1993.

"(2) TERMINATION OF COVERAGE.—The 1950 UMWA Pension Plan and the 1974 UMWA Pension Plan shall each be amended to provide that death benefits coverage shall not be provided to eligible beneficiaries on and after February 1, 1993. This paragraph shall not prohibit such plans from subsequently providing death benefits not described in paragraph (1).

"(d) RESERVES FOR ADMINISTRATION.—The trustees of the Combined Fund may reserve for each plan year, for use in payment of the administrative costs of the Combined Fund, an amount not to exceed 5 percent of the premiums to be paid to the Combined Fund under section 9704(a) during the plan year.

"(e) LIMITATION ON ENROLLMENT.—The Combined Fund shall not enroll any individual who is not receiving benefits under the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan as of July 20, 1992.

"(f) ELIGIBLE BENEFICIARY.—For purposes of this subchapter, the term 'eligible beneficiary' means an individual who—

"(1) is a coal industry retiree who, on July 20, 1992, was eligible to receive, and receiving, benefits from the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, or

"(2) on such date was eligible to receive, and receiving, benefits in either such plan by reason of a relationship to such retiree.

"PART II—FINANCING

"Sec. 9704. Liability of Assigned Operators.

"(a) ANNUAL PREMIUMS.—Each assigned operator shall pay to the Combined Fund for each plan year beginning on or after February 1, 1993, an annual premium equal to the sum of the following three premiums—

"(1) the health benefit premium determined under subsection (b) for such plan year, plus

"(2) the death benefit premium determined under subsection (c) for such plan year, plus

"(3) the unassigned beneficiaries premium determined under subsection (d) for such plan year.

Any related person with respect to an assigned operator shall be jointly and severally liable for any premium required to be paid by such operator.

"(b) HEALTH BENEFIT PREMIUM.—For purposes of this chapter—

"(1) IN GENERAL.—The health benefit premium for any plan year for any assigned operator shall be an amount equal to the product of the per beneficiary premium for the plan year multiplied by the number of eligible beneficiaries assigned to such operator under section 9706.

"(2) PER BENEFICIARY PREMIUM.—The Secretary of Health and Human Services shall calculate a per

beneficiary premium for each plan year beginning on or after February 1, 1993, which is equal to the sum of—

"(A) the amount determined by dividing—

"(i) the aggregate amount of payments from the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan for health benefits (less reimbursements but including administrative costs) for the plan year beginning July 1, 1991, for all individuals covered under such plans for such plan year, by

"(ii) the number of such individuals, plus

"(B) the amount determined under subparagraph (A) multiplied by the percentage (if any) by which the medical component of the Consumer Price Index for the calendar year in which the plan year begins exceeds such component for 1992.

"(3) ADJUSTMENTS FOR MEDICARE REDUCTIONS.—If, by reason of a reduction in benefits under title XVIII of the Social Security Act, the level of health benefits under the Combined Fund would be reduced, the trustees of the Combined Fund shall increase the per beneficiary premium for the plan year in which the reduction occurs and each subsequent plan year by the amount necessary to maintain the level of health benefits which would have been provided without such reduction.

"(c) DEATH BENEFIT PREMIUM.—The death benefit premium for any plan year for any assigned operator shall be equal to the applicable percentage of the amount, actuarially determined, which the Combined Fund will be

required to pay during the plan year for death benefits coverage described in section 9703(c).

"(d) UNASSIGNED BENEFICIARIES PREMIUM.—The unassigned beneficiaries premium for any plan year for any assigned operator shall be equal to the applicable percentage of the product of the per beneficiary premium for the plan year multiplied by the number of eligible beneficiaries who are not assigned under section 9706 to any person for such plan year.

"(e) PREMIUM ACCOUNTS; ADJUSTMENTS.—

"(1) ACCOUNTS.—The trustees of the Combined Fund shall establish and maintain 3 separate accounts for each of the premiums described in subsections (b), (c), and (d). Such accounts shall be credited with the premiums received and debited with expenditures allocable to such premiums.

"(2) ALLOCATIONS.—

"(A) ADMINISTRATIVE EXPENSES.—Administrative costs for any plan year shall be allocated to premium accounts under paragraph (1) on the basis of expenditures (other than administrative costs) from such accounts during the preceding plan year.

"(B) INTEREST.—Interest shall be allocated to the account established for health benefit premiums.

"(3) SHORTFALLS AND SURPLUSES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), if, for any plan year, there is a shortfall or surplus in any premium account, the premium for the following plan year for each assigned operator shall be proportionately reduced or increased, whichever is applicable, by the amount of such shortfall or surplus.

"(B) EXCEPTION.—Subparagraph (A) shall not apply to any surplus in the health benefit premium account or the unassigned beneficiaries premium account which is attributable to—

"(i) the excess of the premiums credited to such account for a plan year over the benefits (and administrative costs) debited to such account for the plan year, but such excess shall only be available for purposes of the carryover described in section 9703(b)(2)(C)(ii) (relating to carryovers of premiums not used to provide benefits), or

"(ii) interest credited under paragraph (2)(B) for the plan year or any preceding plan year.

"(C) NO AUTHORITY FOR INCREASED PAYMENTS.—Nothing in this paragraph shall be construed to allow expenditures for health care benefits for any plan year in excess of the limit under section 9703 (b)(2).

"(f) APPLICABLE PERCENTAGE.—For purposes of this section—

"(1) IN GENERAL.—The term 'applicable percentage' means, with respect to any assigned operator, the percentage determined by dividing the number of eligible beneficiaries assigned under section 9706 to such operator by the total number of eligible beneficiaries assigned under section 9706 to all such operators (determined on the basis of assignments as of October 1, 1993).

"(2) ANNUAL ADJUSTMENTS.—In the case of any plan year beginning on or after October 1, 1994, the applicable percentage for any assigned operator shall be redetermined under paragraph (1) by making the

following changes to the assignments as of October 1, 1993:

"(A) Such assignments shall be modified to reflect any changes during the period beginning October 1, 1993, and ending on the last day of the preceding plan year pursuant to the appeals process under section 9706(f).

"(B) The total number of assigned eligible beneficiaries shall be reduced by the eligible beneficiaries of assigned operators which (and all related persons with respect to which) had ceased business (within the meaning of section 9701(c)(6) during the period described in subparagraph (A).

"(g) PAYMENT OF PREMIUMS.—

"(1) IN GENERAL.—The annual premium under subsection (a) for any plan year shall be payable in 12 equal monthly installments, due on the twenty-fifth day of each calendar month in the plan year. In the case of the plan year beginning February 1, 1993, the annual premium under subsection (a) shall be added to such premium for the plan year beginning October 1, 1993.

"(2) DEDUCTIBILITY.—Any premium required by this section shall be deductible without regard to any limitation on deductibility based on the prefunding of health benefits.

"(h) INFORMATION.—The trustees of the Combined Fund shall, not later than 60 days after the enactment date, furnish to the Secretary of Health and Human Services information as to the benefits and covered beneficiaries under the fund, and such other information as the Secretary may require to compute any premium under this section.

"(i) TRANSITION RULES.—

"(1) 1988 AGREEMENT OPERATORS.—

"(A) 1ST YEAR COSTS.—During the plan year of the Combined Fund beginning February 1, 1993, the 1988 agreement operators shall make contributions to the Combined Fund in amounts necessary to pay benefits and administrative costs of the Combined Fund incurred during such year, reduced by the amount transferred to the Combined Fund under section 9705(a) on February 1, 1993.

"(B) DEFICITS FROM MERGED PLANS.—During the period beginning February 1, 1993, and ending September 30, 1994, the 1988 agreement operators shall make contributions to the Combined Fund as are necessary to pay off the expenses accrued (and remaining unpaid) by the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of February 1, 1993, reduced by the assets of such plans as of such date.

"(C) FAILURE.—If any 1988 agreement operator fails to meet any obligation under this paragraph, any contributions of such operator to the Combined Fund or any other plan described in section 404(c) shall not be deductible under this title until such time as the failure is corrected.

"(D) PREMIUM REDUCTIONS.—

"(i) 1ST YEAR PAYMENTS.—In the case of a 1988 agreement operator making contributions under subparagraph (A), the premium of such operator under subsection (a) shall be reduced by the amount paid under subparagraph (A) by such op-

erator for the plan year beginning February 1, 1993.

"(ii) DEFICIT PAYMENTS.—In the case of a 1988 agreement operator making contributions under subparagraph (B), the premium of such operator under subsection (a) shall be reduced by the amounts which are paid to the Combined Fund by reason of claims arising in connection with the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of February 1, 1993, including claims based on the 'evergreen clause' found in the language of the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan, and which are allocated to such operator under subparagraph (E).

"(iii) LIMITATION.—Clause (ii) shall not apply to the extent the amounts paid exceed the contributions.

"(iv) PLAN YEARS.—Premiums under subsection (a) shall be reduced for the first plan year for which amounts described in clause (i) or (ii) are available and for any succeeding plan year until such amounts are exhausted.

"(E) ALLOCATIONS OF CONTRIBUTIONS AND REFUNDS.—Contributions under subparagraphs (A) and (B), and premium reductions under subparagraph (D)(ii), shall be made ratably on the basis of aggregate contributions made by such operators under the applicable 1988 coal wage agreements as of January 31, 1993.

"(2) 1ST PLAN YEAR.—In the case of the plan year of the Combined Fund beginning February 1, 1993—

"(A) the premiums under subsections (a)(1) and (a)(3) shall be 67 percent of such premiums without regard to this paragraph, and

"(B) the premiums under subsection (a) shall be paid as provided in subsection (g).

"(3) STARTUP COSTS.—The 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan shall pay the costs of the Combined Fund incurred before February 1, 1993. For purposes of this section, such costs shall be treated as administrative expenses incurred for the plan year beginning February 1, 1993.

"Sec. 9705. Transfers.

"(a) TRANSFER OF ASSETS FROM 1950 UMWA PENSION PLAN.—

"(1) IN GENERAL.—From the funds reserved under paragraph (2), the board of trustees of the 1950 UMWA Pension Plan shall transfer to the Combined Fund—

"(A) $70,000,000 on February 1, 1993,

"(B) $70,000,000 on October 1, 1993, and

"(C) $70,000,000 on October 1, 1994.

"(2) RESERVATION.—Immediately upon the enactment date, the board of trustees of the 1950 UMWA Pension Plan shall segregate $210,000,000 from the general assets of the plan. Such funds shall be held in the plan until disbursed pursuant to paragraph (1). Any interest on such funds shall be deposited into the general assets of the 1950 UMWA Pension Plan.

"(3) USE OF FUNDS.—Amounts transferred to the Combined Fund under paragraph (1) shall—

"(A) in the case of the transfer on February 1, 1993, be used to proportionately reduce the premium of each assigned operator under section 9704(a) for the plan year of the Fund beginning February 1, 1993, and

"(B) in the case of any other such transfer, be used to proportionately reduce the unassigned beneficiary premium under section 9704 (a)(3) and the death benefit premium under section 9704(a)(2) of each assigned operator for the plan year in which transferred and for any subsequent plan year in which such funds remain available.

Such funds may not be used to pay any amounts required to be paid by the 1988 agreement operators under section 9704(i)(1)(B).

"(4) TAX TREATMENT; VALIDITY OF TRANSFER.—

"(A) NO DEDUCTION.—No deduction shall be allowed under this title with respect to any transfer pursuant to paragraph (1), but such transfer shall not adversely affect the deductibility (under applicable provisions of this title) of contributions previously made by employers, or amounts hereafter contributed by employers, to the 1950 UMWA Pension Plan, the 1950 UMWA Benefit Plan, the 1974 UMWA Pension Plan, the 1974 UMWA Benefit Plan, the 1992 UMWA Benefit Plan, or the Combined Fund.

"(B) OTHER TAX PROVISIONS.—Any transfer pursuant to paragraph (1)—

"(i) shall not be treated as an employer reversion from a qualified plan for purposes of section 4980, and

"(ii) shall not be includible in the gross income of any employer maintaining the 1950 UMWA Pension Plan.

"(5) TREATMENT OF TRANSFER.—Any transfer pursuant to paragraph (1) shall not be deemed to violate, or to be prohibited by, any provision of law, or to cause the settlors, joint board of trustees, employers or any related person to incur or be subject to liability, taxes, fines, or penalties of any kind whatsoever.

"(b) TRANSFERS FROM ABANDONED MINE RECLAMATION FUND.—

"(1) IN GENERAL.—The Combined Fund shall include any amount transferred to the Fund under section 402(h) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(h)).

"(2) USE OF FUNDS.—Any amount transferred under paragraph (1) for any fiscal year shall be used to proportionately reduce the unassigned beneficiary premium under section 9704(a)(3) of each assigned operator for the plan year in which transferred.

"Sec. 9706. Assignment of Eligible Beneficiaries.

"(a) IN GENERAL.—For purposes of this chapter, the Secretary of Health and Human Services shall, before October 1, 1993, assign each coal industry retiree who is an eligible beneficiary to a signatory operator which (or any related person with respect to which) remains in business in the following order:

"(1) First, to the signatory operator which—

"(A) was a signatory to the 1978 coal wage agreement or any subsequent coal wage agreement, and

"(B) was the most recent signatory operator to employ the coal industry retiree in the coal industry for at least 2 years.

"(2) Second, if the retiree is not assigned under paragraph (1), to the signatory operator which—

"(A) was a signatory to the 1978 coal wage agreement or any subsequent coal wage agreement, and

"(B) was the most recent signatory operator to employ the coal industry retiree in the coal industry.

"(3) Third, if the retiree is not assigned under paragraph (1) or (2), to the signatory operator which employed the coal industry retiree in the coal industry for a longer period of time than any other signatory operator prior to the effective date of the 1978 coal wage agreement.

"(b) RULES RELATING TO EMPLOYMENT AND REASSIGNMENT UPON PURCHASE.—For purposes of subsection (a)—

"(1) AGGREGATION RULES.—

"(A) RELATED PERSON.—Any employment of a coal industry retiree in the coal industry by a signatory operator shall be treated as employment by any related persons to such operator.

"(B) CERTAIN EMPLOYMENT DISREGARDED.—Employment with—

"(i) a person which is (and all related persons with respect to which are) no longer in business, or

"(ii) a person during a period during which such person was not a signatory to a coal wage agreement,

shall not be taken into account.

"(2) REASSIGNMENT UPON PURCHASE.—If a person becomes a successor of an assigned operator after the enactment date, the assigned operator may transfer the assignment of an eligible beneficiary under subsection (a) to such successor, and such succesor shall be treated as the assigned operator with respect to such eligible beneficiary for purposes of this chapter. Notwithstanding the preceding sentence, the assigned operator transferring such assignment (and any related person) shall remain the guarantor of the benefits provided to the eligible beneficiary under this chapter. An assigned operator shall notify the trustees of the Combined Fund of any transfer described in this paragraph.

"(c) IDENTIFICATION OF ELIGIBLE BENEFICIARIES.—The 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan shall, by the later of October 1, 1992, or the twentieth day after the enactment date, provide to the Secretary of Health and Human Services a list of the names and social security account numbers of each eligible beneficiary, including each deceased eligible beneficiary if any other individual is an eligible beneficiary by reason of a relationship to such deceased eligible beneficiary. In addition, the plans shall provide, where ascertainable from plan records, the names of all persons described in subsection (a) with respect to any eligible beneficiary or deceased eligible beneficiary.

"(d) COOPERATION BY OTHER AGENCIES AND PERSONS.—

"(1) COOPERATION.—The head of any department, agency, or instrumentality of the United

States shall cooperate fully and promptly with the Secretary of Health and Human Services in providing information which will enable the Secretary to carry out his responsibilities under this section.

"(2) PROVIDING OF INFORMATION.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, including section 6103, the head of any other agency, department, or instrumentality shall, upon receiving a written request from the Secretary of Health and Human Services in connection with this section, cause a search to be made of the files and records maintained by such agency, department, or instrumentality with a view to determining whether the information requested is contained in such files or records. The Secretary shall be advised whether the search disclosed the information requested, and, if so, such information shall be promptly transmitted to the Secretary, except that if the disclosure of any requested information would contravene national policy or security interests of the United States, or the confidentiality of census data, the information shall not be transmitted and the Secretary shall be so advised.

"(B) LIMITATION.—Any information provided under subparagraph (A) shall be limited to information necessary for the Secretary to carry out his duties under this section.

"(3) TRUSTEES.—The trustees of the Combined Fund, the 1950 UMWA Benefit Plan, the 1974 UMWA Benefit Plan, the 1950 UMWA Pension Plan, and the 1974 UMWA Pension Plan shall fully and promptly cooperate with the Secretary in furnishing, or assisting the Secretary to obtain, any information the Secretary needs to carry out the Secretary's responsibilities under this section.

"(e) NOTICE BY SECRETARY.—

"(1) NOTICE TO FUND.—The Secretary of Health and Human Services shall advise the trustees of the Combined Fund of the name of each person identified under this section as an assigned operator, and the names and social security account numbers of eligible beneficiaries with respect to whom he is identified.

"(2) OTHER NOTICE.—The Secretary of Health and Human Services shall notify each assigned operator of the names and social security account numbers of eligible beneficiaries who have been assigned to such person under this section and a brief summary of the facts related to the basis for such assignments.

"(f) RECONSIDERATION BY SECRETARY.—

"(1) IN GENERAL.—Any assigned operator receiving a notice under section (e)(2) with respect to an eligible beneficiary may, within 30 days of receipt of such notice, request from the Secretary of Health and Human Services detailed information as to the work history of the beneficiary and the basis of the assignment.

"(2) REVIEW.—An assigned operator may, within 30 days of receipt of the information under paragraph (1), request review of the assignment. The Secretary of Health and Human Services shall conduct such review if the Secretary finds the operator provided evidence with the request constituting a prima facie case of error.

"(3) RESULTS OF REVIEW.—

"(A) ERROR.—If the Secretary of Health and Human Services determines under a review under paragraph (2) that an assignment was in error—

"(i) the Secretary shall notify the assigned operator and the trustees of the Combined Fund and the trustees shall reduce the premiums of the operator under section 9704 by (or if there are no such premiums, repay) all premiums paid under section 9704 with respect to the eligible beneficiary, and

"(ii) the Secretary shall review the beneficiary's record for reassignment under subsection (a).

"(B) NO ERROR.—If the Secretary of Health and Human Services determines under a review conducted under paragraph (2) that no error occurred, the Secretary shall notify the assigned operator.

"(4) DETERMINATIONS.—Any determination by the Secretary of Health and Human Services under paragraph (2) or (3) shall be final.

"(5) PAYMENT PENDING REVIEW.—An assigned operator shall pay the premiums under section 9704 pending review by the Secretary of Health and Human Services or by a court under this subsection.

"(6) PRIVATE ACTIONS.—Nothing in this section shall preclude the right of any person to bring a separate civil action against another person for responsibility for assigned premiums, notwithstanding any prior decision by the Secretary.

"(g) CONFIDENTIALITY OF INFORMATION.—Any person to which information is provided by the Secretary of Health and Human Services under this section shall not disclose such information except in any proceedings related to this section. Any civil or criminal penalty which is applicable to an unauthorized disclosure under section 6103 shall apply to any unauthorized disclosure under this section.

"PART III—ENFORCEMENT

"Sec. 9707. Failure to Pay Premium.

"(a) GENERAL RULE.—There is hereby imposed a penalty on the failure of any assigned operator to pay any premium required to be paid under section 9704 with respect to any eligible beneficiary.

"(b) AMOUNT OF PENALTY.—The amount of the penalty imposed by subsection (a) on any failure with respect to any eligible beneficiary shall be $100 per day in the noncompliance period with respect to any such failure.

"(c) NONCOMPLIANCE PERIOD.—For purposes of this section, the term 'noncompliance period' means, with respect to any failure to pay any premium or installment thereof, the period—

"(1) beginning on the due date for such premium or installment, and

"(2) ending on the date of payment of such premium or installment.

"(d) LIMITATIONS ON AMOUNT OF PENALTY.—

"(1) IN GENERAL.—No penalty shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the

Secretary of the Treasury that none of the persons responsible for such failure knew, or exercising reasonable diligence, would have known, that such failure existed.

"(2) CORRECTIONS.—No penalty shall be imposed by subsection (a) on any failure if—

"(A) such failure was due to reasonable cause and not to willful neglect, and

"(B) such failure is corrected during the 30-day period beginning on the 1st date that any of the persons responsible for such failure knew, or exercising reasonable diligence would have known, that such failure existed.

"(3) WAIVER.—In the case of a failure that is due to reasonable cause and not to willful neglect, the Secretary of the Treasury may waive all or part of the penalty imposed by subsection (a) for failures to the extent that the Secretary determines, in his sole discretion, that the payment of such penalty would be excessive relative to the failure involved.

"(e) LIABILITY FOR PENALTY.—The person failing to meet the requirements of section 9704 shall be liable for the penalty imposed by subsection (a).

"(f) TREATMENT.—For purposes of this title, the penalty imposed by this section shall be treated in the same manner as the tax imposed by section 4980B.

"PART IV—OTHER PROVISIONS

"Sec. 9708. Effect on Pending Claims or Obligations.

"All liability for contributions to the Combined Fund that arises on and after February 1, 1993, shall be determined exclusively under this chapter, including all liability for contributions to the 1950 UMWA Benefit Plan

and the 1974 UMWA Benefit Plan for coal production on and after February 1, 1993. However, nothing in this chapter is intended to have any effect on any claims or obligations arising in connection with the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of February 1, 1993, including claims or obligations based on the 'evergreen' clause found in the language of the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan. This chapter shall not be construed to affect any rights of subrogation of any 1988 agreement operator with respect to contributions due to the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan as of February 1, 1993.

"Subchapter C—Health Benefits of Certain Miners

"PART I—INDIVIDUAL EMPLOYER PLANS

"Sec. 9711. Continued Obligations of Individual Employer Plans.

"(a) COVERAGE OF CURRENT RECIPIENTS.—The last signatory operator of any individual who, as of February 1, 1993, is receiving retiree health benefits from an individual employer plan maintained pursuant to a 1978 or subsequent coal wage agreement shall continue to provide health benefits coverage to such individual and the individual's eligible beneficiaries which is substantially the same as (and subject to all the limitations of) the coverage provided by such plan as of January 1, 1992. Such coverage shall continue to be provided for as long as the last signatory operator (and any related person) remains in business.

"(b) COVERAGE OF ELIGIBLE RECIPIENTS.—

"(1) IN GENERAL.—The last signatory operator of any individual who, as of February 1, 1993, is not receiving retiree health benefits under the individual

employer plan maintained by the last signatory operator pursuant to a 1978 or subsequent coal wage agreement, but has met the age and service requirements for eligibility to receive benefits under such plan as of such date, shall, at such time as such individual becomes eligible to receive benefits under such plan, provide health benefits coverage to such individual and the individual's eligible beneficiaries which is described in paragraph (2). This paragraph shall not apply to any individual who retired from the coal industry after September 30, 1994, or any eligible beneficiary of such individual.

"(2) COVERAGE.—Subject to the provisions of subsection (d), health benefits coverage is described in this paragraph if it is substantially the same as (and subject to all the limitations of) the coverage provided by the individual employer plan as of January 1, 1992. Such coverage shall continue for as long as the last signatory operator (and any related person) remains in business.

"(c) JOINT AND SEVERAL LIABILITY OF RELATED PERSONS.—Each related person of a last signatory operator to which subsection (a) or (b) applies shall be jointly and severally liable with the last signatory operator for the provision of health care coverage described in subsection (a) or (b).

"(d) MANAGED CARE AND COST CONTAINMENT.—The last signatory operator shall not be treated as failing to meet the requirements of subsection (a) or (b) if benefits are provided to eligible beneficiaries under managed care and cost containment rules and procedures described in section 9712(c) or agreed to by the last signatory operator and the United Mine Workers of America.

"(e) TREATMENT OF NONCOVERED EMPLOYEE.—The existence, level, and duration of benefits provided to former employees of a last signatory operator (and their eligible beneficiaries) who are not otherwise covered by this chapter and who are (or were) covered by a coal wage agreement shall only be determined by, and shall be subject to, collective bargaining, lawful unilateral action, or other applicable law.

"(f) ELIGIBLE BENEFICIARY.—For purposes of this section, the term 'eligible beneficiary' means any individual who is eligible for health benefits under a plan described in subsection (a) or (b) by reason of the individual's relationship with the retiree described in such subsection (or to an individual who, based on service and employment history at the time of death, would have been so described but for such death).

"(g) RULES APPLICABLE TO THIS PART AND PART II.—For purposes of this part and part II—

"(1) SUCCESSOR.—The term 'last signatory operator' shall include a successor in interest of such operator.

"(2) REASSIGNMENT UPON PURCHASE.—If a person becomes a successor of a last signatory operator after the enactment date, the last signatory operator may transfer any liability of such operator under this chapter with respect to an eligible beneficiary to such successor, and such successor shall be treated as the last signatory operator with respect to such eligible beneficiary for purposes of this chapter. Notwithstanding the preceding sentence, the last signatory operator transferring such assignment (and any related person) shall remain the guarantor of the benefits provided to the eligible beneficiary under this chapter. A last signatory operator shall notify the trustees of the 1992 UMWA Benefit Plan of any transfer described in this paragraph.

"PART II—1992 UMWA BENEFIT PLAN

"Sec. 9712. Establishment and Coverage of 1992 UMWA Benefit Plan.

"(a) CREATION OF PLAN.—

"(1) IN GENERAL.—As soon as practicable after the enactment date, the settlors shall create a separate private plan which shall be known as the United Mine Workers of America 1992 Benefit Plan. For purposes of this title, the 1992 UMWA Benefit Plan shall be treated as an organization exempt from taxation under section 501(a). The settlors shall be responsible for designing the structure, administration and terms of the 1992 UMWA Benefit Plan, and for appointment and removal of the members of the board of trustees. The board of trustees shall initially consist of five members and shall thereafter be the number set by the settlors.

"(2) TREATMENT OF PLAN.—The 1992 UMWA Benefit Plan shall be—

"(A) a plan described in section 302(c)(5) of the Labor Management Relations Act, 1947 (29 U.S.C. 186(c)(5)).

"(B) an employee welfare benefit plan within the meaning of section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)), and

"(C) a multiemployer plan within the meaning of section 3(37) of such Act (29 U.S.C. 1002(37)).

"(b) COVERAGE REQUIREMENT.—

"(1) IN GENERAL.—The 1992 UMWA Benefit Plan shall only provide health benefits coverage to

any eligible beneficiary who is not eligible for benefits under the Combined Fund and shall not provide such coverage to any other individual.

"(2) ELIGIBLE BENEFICIARY.—For purposes of this section, the term 'eligible beneficiary' means an individual who—

"(A) but for the enactment of this chapter, would be eligible to receive benefits from the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, based upon age and service earned as of February 1, 1993; or

"(B) with respect to whom coverage is required to be provided under section 9711, but who does not receive such coverage from the applicable last signatory operator or any related person,

and any individual who is eligible for benefits by reason of a relationship to an individual described in subparagraph (A) or (B). In no event shall the 1992 UMWA Benefit Plan provide health benefits coverage to any eligible beneficiary who is a coal industry retiree who retired from the coal industry after September 30, 1994, or any beneficiary of such individual.

"(c) HEALTH BENEFITS.—

"(1) IN GENERAL.—The 1992 UMWA Benefit Plan shall provide health care benefits coverage to each eligible beneficiary which is substantially the same as (and subject to all the limitations of) coverage provided under the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of January 1, 1992.

"(2) MANAGED CARE.—The 1992 UMWA Benefit Plan shall develop managed care and cost contain-

ment rules which shall be applicable to the payment of benefits under this subsection. Application of such rules shall not cause the plan to be treated as failing to meet the requirements of this subsection. Such rules shall preserve freedom of choice while reinforcing managed care network use by allowing a point of service decision as to whether a network medical provider will be used. Major elements of such rules may include, but are not limited to, elements described in paragraph (3).

"(3) MAJOR ELEMENTS OF RULES.—Elements described in this paragraph are—

"(A) implementing formulary for drugs and subjecting the prescription program to a rigorous review of appropriate use,

"(B) obtaining a unit price discount in exchange for patient volume and preferred provider status with the amount of the potential discount varying by geographic region,

"(C) limiting benefit payments to physicians to the allowable charge under title XVIII of the Social Security Act, while protecting beneficiaries from balance billing by providers,

"(D) utilizing, in the claims payment function 'appropriateness of service' protocols under title XVIII of the Social Security Act if more stringent,

"(E) creating mandatory utilization review (UR) procedures, but placing the responsibility to follow such procedures on the physician or hospital, not the beneficiaries,

"(F) selecting the most efficient physicians and state-of-the-art utilization management techniques, including ambulatory care techniques, for medical services delivered by the managed care network, and

"(G) utilizing a managed care network provider system, as practiced in the health care industry, at the time medical services are needed (point-of-service) in order to receive maximum benefits available under this subsection.

"(4) LAST SIGNATORY OPERATORS.—The board of trustees of the 1992 UMWA Benefit Plan shall permit any last signatory operator required to maintain an individual employer plan under section 9711 to utilize the managed care and cost containment rules and programs developed under this subsection if the operator elects to do so.

"(5) STANDARDS OF QUALITY.—Any managed care system or cost containment adopted by the board of trustees of the 1992 UMWA Benefit Plan or by a last signatory operator may not be implemented unless it is approved by, and meets the standards of quality adopted by, a medical peer review panel, which has been established—

"(A) by the settlors, or

"(B) by the United Mine Workers of America and a last signatory operator or group of operators.

Standards of quality shall include accessibility to medical care, taking into account that accessibility requirements may differ depending on the nature of the medical need.

"(d) GUARANTEE OF BENEFITS.—

"(1) IN GENERAL.—All 1988 last signatory operators shall be responsible for financing the benefits described in subsection (c), in accordance with contribution requirements established in the 1992 UMWA Benefit Plan. Such contribution requirements, which shall be applied uniformly to each 1988

last signatory operator, on the basis of the number of eligible and potentially eligible beneficiaries attributable to each operator, shall include:

"(A) the payment of an annual prefunding premium for all eligible and potentially eligible beneficiaries attributable to a 1988 last signatory operator,

"(B) the payment of a monthly per beneficiary premium by each 1988 last signatory operator for each eligible beneficiary of such operator who is described in subsection (b)(2) and who is receiving benefits under the 1992 UMWA Benefit Plan, and

"(C) the provision of security (in the form of a bond, letter of credit or cash escrow) in an amount equal to a portion of the projected future cost to the 1992 UMWA Benefit Plan of providing health benefits for eligible and potentially eligible beneficiaries attributable to the 1988 last signatory operator. If a 1988 last signatory operator is unable to provide the security required, the 1992 UMWA Benefit Plan shall require the operator to pay an annual prefunding premium that is greater than the premium otherwise applicable.

"(2) ADJUSTMENTS.—The 1992 UMWA Benefit Plan shall provide for—

"(A) annual adjustments of the per beneficiary premium to cover changes in the cost of providing benefits to eligible beneficiaries, and

"(B) adjustments as necessary to the annual prefunding premium to reflect changes in the cost of providing benefits to eligible beneficiaries for whom per beneficiary premiums are not paid.

"(3) ADDITIONAL LIABILITY.—Any last signatory operator who is not a 1988 last signatory operator shall pay the monthly per beneficiary premium under paragraph (1)(B) for each eligible beneficiary described in such paragraph attributable to that operator.

"(4) JOINT AND SEVERAL LIABILITY.—A 1988 last signatory operator or last signatory operator described in paragraph (3), and any related person to any such operator, shall be jointly and severally liable with such operator for any amount required to be paid by such operator under this section.

"(5) DEDUCTIBILITY.—Any premium required by this section shall be deductible without regard to any limitation on deductibility based on the prefunding of health benefits.

"(6) 1988 LAST SIGNATORY OPERATOR.—For purposes of this section, the term '1988 last signatory operator' means a last signatory operator which is a 1988 agreement operator.

"Subchapter D—Other Provisions

"Sec. 9721. Civil Enforcement.

"The provisions of section 4301 of the Employee Retirement Income Security Act of 1974 shall apply to any claim arising out of an obligation to pay any amount required to be paid by this chapter in the same manner as any claim arising out of an obligation to pay withdrawal liability under subtitle E of title IV of such Act. For purposes of the preceding sentence, a signatory operator and related persons shall be treated in the same manner as employers.

"Sec. 9722. Sham Transactions.

"If a principal purpose of any transaction is to evade or avoid liability under this chapter, this chapter shall be applied (and such liability shall be imposed) without regard to such transaction."

(b) AMENDMENTS TO SURFACE MINING ACT.—

(1) EXTENSION OF FEE PROGRAM.—Section 402 (b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(b)) is amended by striking "September 30, 1995" and inserting "September 30, 2004".

(2) TRANSFER TO FUND.—Section 402 of such Act (30 U.S.C. 1232) is amended by adding at the end the following new subsection:

"(h) TRANSFER OF FUNDS TO COMBINED FUND.—(1) In the case of any fiscal year beginning on or after October 1, 1995, with respect to which fees are required to be paid under this section, the Secretary shall, as of the beginning of such fiscal year and before any allocation under subsection (g), make the transfer provided in paragraph (2).

"(2) The Secretary shall transfer from the fund to the United Mine Workers of America Combined Benefit Fund established under section 9702 of the Internal Revenue Code of 1986 for any fiscal year an amount equal to the sum of—

"(A) the amount of the interest which the Secretary estimates will be earned and paid to the Fund during the fiscal year, plus

"(B) the amount by which the amount described in subparagraph (A) is less than $70,000,000.

"(3)(A) The aggregate amount which may be transferred under paragraph (2) for any fiscal year shall not exceed the amount of expenditures which the trustees of the Combined Fund estimate will be debited against the unassigned beneficiaries premium account under section 9704(e) of the Internal Revenue Code of 1986 for the fiscal year of the Combined Fund in which the transfer is made.

"(B) The aggregate amount which may be transferred under paragraph (2)(B) for all fiscal years shall not exceed an amount equivalent to all interest earned and paid to the fund after September 30, 1992, and before October 1, 1995.

"(4) If, for any fiscal year, the amount transferred is more or less than the amount required to be transferred, the Secretary shall appropriately adjust the amount transferred for the next fiscal year."

(3) CONFORMING AMENDMENTS.—(A) Section 401(c) of such Act (30 U.S.C. 1231(c)) is amended by striking "and" at the end of paragraph (11), by redesignating paragraph (12) as paragraph (13), and by adding after paragraph (11) the following new paragraph:

"(12) for the purpose described in section 402 (h); and".

(B) Section 402(g)(1) of such Act (30 U.S.C. 1232(g)) is amended by striking "Moneys" and inserting "Except as provided in subsection (h), moneys".